United States Court of Appeals

for the Second Circuit

EXHIBITS

#1 10-19-76 A.M. with

76-4054

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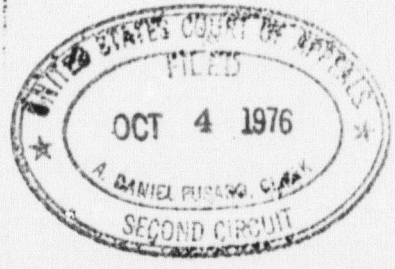
IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 76-4054

RCA GLOBAL COMMUNICATIONS, INC.,	
Petitioner,	
-against-	
FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA,	
Respondents,	
ITT WORLD COMMUNICATIONS INC., ITT TELECOMMUNICATIONS CORP. and WESTERN UNION INTERNATIONAL, INC.,	
Intervenors.	

Petition for Review of a
Report and Order and Notice of
Proposed Rulemaking of the
Federal Communications Commission

EXHIBITS TO AFFIDAVIT OF
FRANCIS J. DeROSA
ON MOTION FOR STAY
Including Relevant Portions of
Record Before FCC



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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States Including Possible Revisions to the Formula Prescribed Pursuant to Section 222 of the Communications Act.	)	Docket No. 19660 RM-690

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 1976; Released: September 27, 1976

By the Commission:

1. On January 7, 1976, we issued a Report and Order and Notice of Proposed Rulemaking in the above-captioned matter, 57 FCC 2d 190. In that Report and Order we found that the formula governing distribution by the Western Union Telegraph Co. (WU) among the international record carriers (IRCs) of outbound unrouted international message telegraph traffic (international formula) which we had prescribed in 1943 pursuant to 47 U.S.C. § 222(e)(1) (1971), is unjust, unreasonable, inequitable and not in the public interest. We also instituted an inquiry into the legal, economic and operational implications of placing distribution of such traffic on the basis of required customer-routings. Pending the outcome of the above inquiry, we prescribed an interim distribution of outbound traffic (interim formula) to become effective upon repeal of the original international formula on March 1, 1976. The effective date was subsequently stayed by the Commission pending resolution of the petitions discussed below. International Record Carriers, 58 FCC 2d 266 (1976).

2. The Commission now has before it for consideration the following petitions and motions, pertaining to the January Report and Order:

(a) A Petition for Stay filed by RCA Global Communications, Inc., (RCA) on February 11, 1976 seeking a stay pending review of our Report and Order in the Court of Appeals;

(b) A Petition for Reconsideration filed by Western Union International, Inc. (WUI) on February 11, 1976, seeking, inter alia, postponement of the effective date of the interim formula until January 1, 1977;

(c) A Motion for Extension filed by WU on February 19, 1976 seeking extension until March 21, 1976 of the date for implementing the interim formula in which WU states that it needs the extra time to complete modifications of its facilities and the augmenting and training of its personnel necessary to implement the interim formula; 1/ and

(d) A Contingent Motion for Clarification filed by WU on March 5, 1976 requesting clarification of our March 5, 1976 Stay Order to make explicit that WU is to be reimbursed by the IRCs for any increased expense it incurs during the pendency of the stay in proparing for implementation of the interim formula.

I. RCA PETITION FOR STAY

3. RCA generally challenges the lawfulness of the January Report and Order and attempts to demonstrate that a stay of that order is justified under the standards set forth in Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958). We do not believe that RCA has sustained its burden in this regard.

4. RCA contends that the procedures followed by the Commission were defective in that they did not provide it a "full hearing" as required by Section 222(e)(3) of the Communications Act. It argues that the Commission was required under the statute to conduct an oral evidentiary hearing (commonly referred to as a "trial-type" hearing) as a condition precedent to any alteration of the formula. Alternatively, RCA suggests that, even if not absolutely required by the statutory language, an oral hearing was required by the circumstances of the present case and that our failure to convene a hearing was therefore an abuse of discretion. We do not agree with either of RCA's arguments and conclude that our prodecures both meet the requirements of the statute and adequately protect RCA's procedural rights.

5. The characteristics of the international formula, general applicability and future effect, demonstrate that it is in form and fact a "rule," within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. Section 551(4) (1970). Accordingly, any proceeding to amend or alter it is a "rulemaking" (as contrasted to an adjudication) within the meaning of Section 551(5) of the APA. Section 553 of the APA, setting forth the standards for rulemaking, does not absolutely require a trial-

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1/ In view of our action herein, this request has become moot. Accordingly, we will dismiss the WU petition.

type hearing. Instead it provides for a notice and comment procedure of the form employed in this proceeding. Section 553 requires trial-type proceedings only where the operative statute requires rules to be made "on the record after opportunity for an agency hearing." 5 U.S.C. § 553 (c). The "full hearing" requirement of § 222(e)(3) is not the equivalent of the APA requirement regarding a decision "on the record." See United States v. Allegheny Ludlum Steel Co., 406 U.S. 742 (1972). RCA relies on United States v. Storer Broadcasting Co., 351 U.S. 192 (1956), for the proposition that a "full hearing" under the Communications Act has been judicially defined to mean trial-type hearing. However, that case dealt specifically with applications under Section 309 of the Act for broadcast licenses, contests of which Congress has defined to be "adjudication." See 5 U.S.C. § 558(c). Moreover, even in Storer the Supreme Court upheld the FCC's reliance on rulemaking proceedings rather than individual adjudicatory hearings. See also, Bell Telephone Company of Pennsylvania v. FCC, 503 F.2d 1250, (3rd Cir. 1974), cert. denied, 422 U.S. 1026 (1975). The new rule was adopted after soliciting the views of all interested parties and after all parties had full opportunity to present their own arguments, counterarguments and recommendations. The procedures followed were, thus, in full compliance with the requirements of Section 222 and the APA.

6. RCA also alleges that we have placed a simplistic reliance on competition as the benchmark of the public interest and that this runs afoul of the principle announced in FCC v. RCA Communications, Inc., 346 U.S. 86 (1953) and reiterated in Hawaiian Telephone Company v. FCC, 498 F.2d 771 (D.C. Cir. 1974). While we realized that increased competition would likely result, our action was not based solely on the hope of increasing competition; nor did we simply equate increased competition with benefit to the public interest. We note that, quite apart from any action on our part, competition is a fact of the history of the international record industry and predates the organization of this Commission. Our Report and Order, therefore, merely recognizes, as it reasonably must, that such competition exists. Our decision did not increase the facilities or service points of any carrier; but merely removed the arbitrary penalty placed upon the carriers by which their efforts to obtain traffic are nullified by an equivalent loss of unrouted traffic.

7. The error identified in the RCA and Hawaiian Telephone cases is increasing competition on the basis of an undifferentiated national policy in favor of competition, without considering the derirability or feasibility of such increased competition in a particular case. See Pocket Phone Broadcast Service, Inc. v. FCC, D.C. Cir. No. 74-2041 (decided July 16, 1976). The public's interest in the formula matter is its general interest in having available to it a rapid, efficient communications service with adequate facilities at reasonable charges. See 47 U.S.C. § 151. Our report and Order merely observed that in our experience competition has been an effective way to achieve those ends

and that, absent compelling circumstances such as those in 1943, we see no reason to penalize competition which already exists. We did not, nor were we required to, find that service is presently inadequate. FCC v. RCA, 346 U.S. at 96-7. We do not agree, however, that the original formula has aided in achieving that result. Our experience convinces us that maintenance of the present service quality and its improvement is more likely where the carriers are required to earn the traffic they receive than where they receive it arbitrarily under a fixed quota. RCA has not shown anything which suggests that this view is incorrect under the present circumstances.

8. We do not agree, as RCA implies, that the original formula was designed to eliminate competition among the IRCs. As we view the legislative history, the Section 222(e) requirement for a formula was enacted to protect the competitive positions of the IRCs in the face of WU's post-merger dual capacity as domestic monopolist and international competitor. This fact is also evident from the text of the formula as well as our order prescribing it. See 10 FCC 184 (1943). Were the intent of the original formula to eliminate competition, it would have been much simpler to ignore customer routings altogether and to prescribe a fixed quota share for each carrier. The complicated structure of the formula, particularly the provision assuring carriers of all traffic specifically routed via their facilities, can only be explained as an attempt to allow the carriers to develop, while eliminating WU's discretion in choosing who was to receive traffic. In this respect, the original formula was definitely a pro-competition tool. The features of the formula we found objectionably anti-competitive (the fixed quotas and the balancing provisions) were necessary in 1943 as the most reasonable way to protect the IRC's against WU abuses. 2/ Our January Report and Order found that WU's divestment of its international operations had removed the need for those features and that traffic distribution could be made on a more dynamic basis. Our interim formula retains those aspects of the original formula which we believe remain sound and desirable under present conditions.

9. The interim formula also preserves elements of the 1943 formula in the use of routed traffic shares to determine the distribution of unrouted traffic. Reduced to its essentials, the original formula is a system of proportionate distribution. The concept of proportionate distribution is sound and equitable and one that will best assure the public a strong and dynamic international telegraph industry. 3/

2/ Our Order prescribing the original formula also adverts to the possibility of revision of the formula to reflect changes in operations. See 10 FCC at 192, 196.

3/ RCA apparently agrees that proportionate distribution is an acceptable basis for distribution of traffic under the 1943 formula since it was a party to its creation and supported its adoption when presented to the Commission for review.

We recognize that proportionate distribution is not the only way to distribute unrouted traffic, but it appears to us the most reasonable basis for distributing traffic because it relies on the experience in the market place rather than the arbitrary judgment of this Commission. Proportionate distribution, coupled with the interim formula's requirement for frequent updating of the carriers' quotas, allows the distribution to reflect, relatively immediately, changes in the market place and rewards carriers with additional unrouted traffic when they succeed in persuading more customers to route messages via a specific carrier.

10. Moreover, we find little merit to RCA's allegations that the Order is deficient because it fails to state how it benefits the public interest to relate a carrier's share of unrouted traffic to its share of routed traffic. To the contrary, we explicitly stated that the purpose of revising the distribution formula was to minimize any disincentives to carrier-initiated improvements in quality of service and to maximize the possibility of future benefits in this regard. 57 FCC 2d at 202. Having found that the original formula provided no incentives for the IRC's to improve service or increase efficiency, our obligations under the mandate of 47 U.S.C. § 151 dictated that we adopt a formula which does provide such stimuli. 57 FCC 2d at 208.

11. We disagree with RCA's argument that our Report and Order is deficient because we failed to consider the effect on RCA of a change in the original formula. While we designated as issues in the present inquiry the effect on the carriers and the public of the original formula and of party recommendations for formula revision, we do not believe that our Report and Order or the interim formula is unlawful because we did not include a detailed quantitative analysis. We do not believe that Section 222(e)(3) requires a precise and comprehensive quantitative analysis of potential revenue effects -- if in fact such an analysis is possible -- or that it would be any more helpful than the information we had available to us and considered in prescribing the interim formula. As is apparent from the statutory language, the thrust of Section 222(e)(1) is a requirement to devise a means of distributing traffic which does not favor or prejudice any carrier. The same holds true for a proceeding under Section 222(e)(3) to review and amend the existing distribution. The primary question here, in addition to whether it serves the public interest, is to assure that the distribution of unrouted traffic be just, reasonable and equitable, and that if it appears to us that it is not, our obligation is to replace it with one that is equitable. No carrier has an absolute claim to unrouted traffic under the 1943 formula. The only claim a carrier has is that created by the formula. Therefore, once we determine that a method of distribution is unjust and devise a new method which meets the statutory standards, the possibility that a carrier will thereafter lose traffic it formerly received is inherent to the statutory command that unrouted traffic be equitably distributed. It must be remembered that any claim of diversion of traffic under a new distribution is a two-edged sword. It is not only a measure of the cost to one set of interests of a change, it also is a measure of the damage to other

interests occasioned by the prior pattern of distribution. Thus, RCA's claim of harm from the interim formula equally catalogues the impact on ITT, TRT and FTC from the original formula.

12. We are not saying by this that the potential effect of a change in distribution is not an important consideration, or that we ignored it in devising the interim formula. This consideration is inherent in our overall duty to regulate in the public interest. The public's interest in the formula matter is its general interest in a rapid, efficient communications service with adequate facilities and reasonable charges. See 47 U.S.C. § 151. Therefore, the impact of the interim formula must be examined in the context of its effect on that interest. In considering this impact, we must balance the benefits which we see from the new distribution against possible harm to the public. See, e.g., F.P.C. v. Hope Natural Gas Company, 320 U.S., 591 (1944). In the present matter, this translates to a consideration of whether the redistribution of traffic will unreasonably endanger the financial integrity of the carriers to the point that they are unable to adequately serve the public. We do not see such an impact resulting from the interim formula. With respect to ITT, TRT and FTC, the interim formula will likely result initially in their receiving increased unrouted traffic and increased revenues. We would expect this to improve their financial position and would therefore be unlikely to harm their ability to provide service to the public.4/ With respect to RCA and WUI, the interim formula does appear likely initially to reduce their message volumes and revenues. Even here, though, we do not see any possible public harm.

13. RCA argues that it will suffer a reduction in gross operating revenues of $2,028,000 annually if the interim formula is implemented. 5/ Although we believe that any measure of potential revenue shift is speculative, for present purposes we will accept RCA's estimate. In 1975, RCA reported total operating revenues from all services of $129,831,489 and a net income of $32,071,720. The diversion of revenues projected by RCA is roughly 1.5% of its operating revenues and 6.3% of its net income. Although the loss of these revenues would obviously reduce its profitability for the year, it would not so reduce RCA's revenues as to put it into a loss situation or otherwise damage its ability to serve

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4/ We do not expect that increased demand will render these carriers' facilities inadequate. Message service requires relatively few transmission facilities, primarily telegraph-grade circuits which are readily available and low in cost. We therefore expect that these carriers would be able to supplement their present facilities easily and at little cost should that become necessary.

5/ $428,000 from outbound traffic and $1,600,000 from inbound traffic.

the public even in the short run. It should also be emphasized that this is a worst-case assumption and is predicated upon RCA's not making efforts to acquire lost traffic through increasing its routed traffic. It also assumes that 100% of RCA's costs involving the diverted traffic are fixed. However, we have no basis on which to so assume.

14. We find no merit to RCA's arguments that the interim formula is unduly complex, making it excessively expensive or difficult to administer, or that it will lead to a degradation in service quality. First, the interim formula is certainly less complex than the original formula, which RCA does not find objectionably complicated. While we sought to continue in the interim formula the original formula's concept of proportionate distribution, we eliminated as many of its ancillary complexities as possible. For example, we eliminated the separate quotas for each class of message and for the gateways and hinterlands. What RCA appears to object to is the fact that we replaced the original formula's area quota system with a quota for each destination. The use of individual destination quotas, however, relates distribution of unrouted traffic to the realities of the market. Second, we disagree that the interim formula will be unduly expensive to administer. The interim formula will require WU, at least initially, to handle more unrouted messages manually than it now does, and could, therefore, increase its costs per message. However, this is merely a question of degree, since WU presently handles many messages manually. The minimal economies that may be lost initially are outweighed by the deleterious effects on the carriers and the public of denying carriers incentive to seek more routed traffic. However, in fulfilling our public interest responsibilities, we will monitor WU's performance and will investigate any complaint that WU is not exercising prudent judgment in this area.

15. We are similarly unpersuaded by RCA's arguments that the interim formula will lead to an unreasonable degradation of service quality. RCA again bases its arguments on the fact that the interim formula will require manual handling for more unrouted messages. WU estimates that manual handling of messages will require an average of 20 minutes per message. Because many of these messages are presently switched directly from the WU computer to the IRCs, RCA argues that this represents a severe degradation in service quality. We note that substantial numbers of messages are already processed manually at the Minneapolis facility -- i.e., the messages for those destinations where the existing formula still calls for proportionate distribution. RCA does not object to the time required to process those messages. WU has asserted that the procedures it has proposed are designed to maintain existing service standards at Minneapolis despite the increased load and we see no reason presently to challenge WU's projections. When viewed in the overall context of the overseas message service, we are not persuaded that manual processing is unreasonable or that a 20-minute processing time for unrouted messages is inefficient. We note, however, that WU is proceeding with its efforts to automate the entire message-handling procedure and that it anticipates it will be ready to operate in this mode by the end of 1976.

However, we see no reason to delay further the benefits to the public we see in the interim formula merely because WU initially must use manual procedures.

16. RCA alleges that the interim formula will result in disastrously expensive solicitation efforts to increase IRC shares of routed traffic -- "leading to millions (of dollars) in new costs." Nothing in our Report and Order indicates our desire for such a result; we merely indicated there that we expected the carriers to strive, as they have not in the past, to reach a substantial segment of the public and persuade them to route their messages. 6/ We do not construe this as a directive to engage in wasteful orgies of spending. Irrespective of the interim formula, it is a fact of business life in a competitive environment that the carriers must advertise if they are to make the public aware of its alternatives. The IRCs presently engage in a continuing program of advertising all their services. Therefore, any increase in carrier solicitation efforts resulting from our action will fit within the context of their present practices and is unlikely to create a problem. RCA is unrealistic in suggesting that the IRCs will engage in suicidal advertising campaigns. Rather, we expect that the IRCs will apply the same type of business judgment in this matter as they do in other aspects of their business. In any event, we are required to grant the IRCs a certain latitude in their business judgments, including the amounts they choose to spend. RCA has failed to demonstrate any reason for us to conclude that the IRCs will act imprudently.

17. We also disagree with RCA's allegations that uncertainty as to the time the interim formula will be in effect will lead to inefficiencies on the part of the carriers. What RCA must be arguing is that our designation of the formula as an interim solution will make the carriers uncertain as to the planning of new facilities. We note that RCA itself has argued that message service is relatively static; therefore, the carriers' facility needs for the service will not change rapidly or frequently. Further, the carriers do not generally produce or lease telegraph-grade circuits such as used in the message service. Rather, they usually derive those channels by multiplexing voice-grade channels into 22 (cable) or 24 (satellite) telegraph-grade channels. For most service points, one such channel is all that is needed to provide message service. The fact is that a decision to augment facilities is made on the basis of the carriers' needs for circuits in connection with telex and leased-channel services which are more dynamic. In any event, the redistribution of traffic under the interim formula does not appear to us likely to result in major changes in the carriers' facility requirements. A change to the all-routed approach should not result in any great shift either, since the pattern of distribution should closely

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6/ Report and Order, paragraph 47.

resemble that under the interim formula. The changes in carrier handling of traffic under either method of distribution will occur in response to the normal forces in a competitive market which historically have been evolutionary rather than precipitate.

18. RCA has failed to make a strong showing that it will be irreparably injured if we deny it the requested stay. RCA alleges in this connection that if the interim formula becomes effective it will lose unrouted traffic it presently receives under the existing formula. We do not find this to be the kind of injury which would justify issuance of a stay. The diversion of traffic likely under the interim formula does not appear likely to threaten the viability of RCA's message operations. It will continue to operate under the interim formula and to receive traffic. It will be in the same position as the other carriers to seek to increase its share of routed and, derivatively, unrouted traffic. If, after completion of its review the appellate court should reverse our decision, RCA will be able to reacquire the traffic it lost. We are not faced with a situation where RCA would lose customers to another IRC who might develop business relations with that other carrier and not desire to change back to RCA. RCA will receive at all times all traffic routed via it. Customers filing unrouted traffic are not aware which IRC handles their traffic and so will not be aware of any change. In the event of a reversal, RCA will thus be in a position to resume operations under the present formula without any substantial change in its position. The mere fact that it will not receive an unspecifiable amount of revenues during the intervening period is not sufficient to establish irreparable harm. RCA's unsubstantial claims of harm must be weighed against the harm to other carriers and the public if the interim formula does not become effective. In view of RCA's failure to make a strong showing that it is likely to prevail on the merits, its showing is insufficient to delay the benefits to the public that we see emanating from the interim formula.

19. RCA has also failed to show that issuance of a stay will not result in substantial harm to other parties or the public. The only argument RCA offered on the question of the effect of a stay on the other parties is to assert that a stay will merely continue in effect a pattern of distribution under which the carriers have operated, generally profitably, for more than 30 years. We are not persuaded by its reasoning. RCA appears to be arguing that the other carriers will not be harmed by a stay since it will maintain the status quo and will not cause them to change their position. However, in the present matter it is precisely the present pattern of distribution we have found to be unreasonable and inequitable. Therefore, a stay would continue for an indefinite period the inequities of the original formula. Delay will deny the carriers traffic to which we have found them to be entitled under the

interim formula. 7/ While we cannot quantify the extent this will harm those carriers, we note that RCA's arguments of the effects on it caused by a loss of traffic also apply to the harm caused the others who do not receive that traffic. In these circumstances, to save RCA from the traffic diversion, while causing a similar adverse effect on ITT and TRT, is not in our judgment equitable and is not an appropriate grounds for the relief requested. 8/

20. Most importantly, RCA has failed to show that a grant of its request would advance the public interest. In this regard, the most RCA offers is an assertion that a stay of the interim formula will not cause any short-term detriment to the public. We believe, however, that the public will benefit from the new method of distribution through the incentives it provides the carriers to increase their efficiency and to maintain or improve service quality. Further, we find substantial disincentives to such goals in the original formula. In the absence of any substantial showing that our decision is deficient or that our conclusions are erroneous, we see no reason to delay the benefits of the interim formula. The interim formula resulted from a careful analysis of all the relevant matters and RCA has shown nothing which suggests that it will be likely to obtain reversal of that formula. No grounds exist, therefore, for further denying the other carriers the equitable distribution embodied in the interim formula. Accordingly, for all the above reasons, we will deny RCA's Petition For Stay.

II. WUI PETITION FOR RECONSIDERATION

21. Turning now to the WUI Petition for Reconsideration, we are similarly unpersuaded by anything contained therein either that our Report and Order was erroneous, or that the effectiveness of the interim formula should be further postponed. In its Petition, WUI also challenged, without elaboration, our decision to base distribution of unrouted traffic on the carriers' respective shares of routed traffic. What we said above in connection with the RCA Petition for Stay applies equally to WUI's argument on this point and for that reason we will deny this request of WUI. Alternatively, WUI requested us to redefine "routed" traffic

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7/ We also dispute RCA's characterization of the redistribution of traffic to other carriers under the interim formula as an "unanticipated and unjustified revenue windfall." As we have noted, no carrier has any claim to unrouted traffic except that conferred by the formula. So long as a formula meets the statutory criteria, a carrier has a valid claim to that traffic. As the interim formula qualifies under that standard, the carriers are legally entitled to all traffic received under its provisions and its receipt can hardly constitute a "windfall."

for purposes of the interim formula to exclude self-generated traffic in calculating the carrier respective routed-traffic shares. Self-generated traffic refers to traffic originated over a particular IRC's own facilities, as contrasted with traffic originating with WU and transferred to the IRC. Such traffic includes messages filed over the counter at an IRC public office, by telephone, over an IRC-supplied (telex) teleprinter. See Interim Formula, Section IV (a) - (c). After considering WUI's arguments, we adhere to our conclusion that self-generated traffic should be considered in calculating the carrier quotas. Self-generated traffic has a central role in the distribution of traffic under the original formula and the interim formula merely continues that practice. 9/ Therefore, we are unpersuaded by WUI's argument that it had no notice that self-generated traffic might be included in quota calculation. 10/ WUI could hardly be unaware that some features of the original formula might be retained in an amended formula. More importantly, however, WUI was on notice of the self-generated traffic question because that question was specifically placed in issue by the pleadings of the parties. 11/ Moreover, WUI itself advocated inclusion of self-generated traffic in connection with its third counterproposal. WUI Supplemental Comments at pp. 7-11. See also 57 FCC 2d at 196-7. WUI advocated a simplified version of the original formula which would place all carriers on an equal footing and base each carrier's quota of unrouted traffic on all its routed traffic -- including self-generated traffic. Even though WUI chose to oppose, with the exception of its own counterproposal, proportionate distribution, and chose not to address the merits of including self-generated traffic, it clearly had notice of the issue and cannot now argue that it was denied the opportunity to comment. Accordingly, we find without merit WUI's contention

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9/ In fact, as our Report and Order recognized, at paragraph 20, the unanticipated growth in the relative proportion of self-generated traffic was the chief reason for the accumulation of large deficiencies and overages under the original formula.

10/ WUI, in fact, noted that self-generated traffic was included in calculating quotas under the original formula. See WUI supplemental comments at p. 14.

11/ TRT, by letter dated June 26, 1973, advocated proportionate distribution of traffic, but argued against inclusion of self-generated traffic in calculating quotas. ITT, in its Statement, at p. 33, agreed with TRT with respect to proportionate distribution but advocated inclusion of self-generated traffic.

that it was denied "due notice and hearing" on this issue as provided for in Section 222(e)(1) or a "full hearing" under Section 222(e)(3). Similarly, we find without merit WUI's contention that our inclusion of self-generated traffic in calculating carrier quotas denied it the notice required by Section 553(b) of the APA.

22. Nor are we persuaded by WUI's arguments that inclusion of self-generated traffic will unfairly prejudice WUI due to its lack of public offices in the gateways. The amount of traffic affected by this provision is so small that it would not have a significant effect on WUI's operating results. 12/ WUI has shown nothing which would justify excluding self-generated traffic in calculating unrouted traffic quotas under the interim formula. The fact that the formula concept is aimed at, and only applicable to, unrouted traffic (which is by definition traffic handled by WU) does not argue that only routed WU transfer traffic should be used to determine distribution of unrouted traffic. Self-generated traffic is an integral and important part of routed traffic which it would be illogical to ignore.

23. We also disagree with WUI that the IRCs compete in conceptually different markets which require different methods of distribution. All IRCs are more or less equally situated with respect to traffic originating in the hinterland; no one carrier has better access than another. As TRT noted in opposing WUI's arguments, the carriers compete on a nationwide basis both in gateways and hinterland, since both gateway and hinterland customers may file their messages with WU and both have the option to route their messages or to file them unrouted. Thus, the important criterion for decision in the formula question is not, as WUI suggests, the relationship of WU to the filing public, but that of the IRCs and the public - since it is the IRCs, not WU, who will carry the messages overseas. Further, it is not the relation of WU to the public which creates unrouted traffic, but whether the IRCs are able to persuade customers to insert routings. WU does not carry traffic internationally; in this connection it is a conduit to the various IRCs. In addition to conceptual weaknesses, WUI's arguments are internally inconsistent. While arguing that only WU transfer traffic is relevant to the formula, WUI inexplicably would include direct access traffic with which WU has no connection. Further, WUI would include gateway-originated traffic filed with WU even though it comes from a market which WUI asserts is irrelevant since the IRCs compete directly there. 13/ We note that

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12/ During the WU study period, 8,098 messages were filed unrouted at designated WU offices, while WUI reported 276,554 direct pickups of its own. Thus, the designated-office traffic amounts only to about 3% of its total self-generated traffic.

13/ WUI's argument is thus factually incorrect since WU has an "operating preserve" in the gateways equal to that of the IRCs. WUI is also inaccurate with respect to the hinterland; the IRCs have a direct operating presence there, albeit to a lesser extent than WU, through the mechanism of direct access.

WUI's proportion of routed WU transfers is higher than its proportion of self-generated traffic or its share overall. Therefore, it would be to WUI's advantage to exclude self-generated traffic, since that would yield it more unrouted traffic under the interim formula. We believe that WUI has not shown that self-generated traffic should be excluded in calculating carrier quotas under the interim formula. 14/

24. Phasing-in of the Interim Formula. WUI has shown no reason why the interim formula should be phased in rather than becoming effective immediately. Section 222(e)(3) requires us, once we have found the present method of distribution to be unjust, to prescribe a new distribution which will meet the statutory standards. A phased implementation would not be consistent with this requirement, although we believe that such an approach would be within our discretion under the Act if we found strong public interest reasons for it. In the present matter, we see no public benefits from such an approach and, further, strongly question whether it would be feasible. The philosophy underlying the interim formula, that unrouted traffic be distributed according to customer wishes expressed through specific routings, would be frustrated by a phased implementation. Beyond this, we can see no reasonable basis for implementing the approach.

25. Gateway Direct Access. WUI also seeks clarification of Paragraph IV (b) of the interim formula which defines specifically routed messages to include those "filed with an international carrier at its gateway office by means of domestic communications networks . . . so long as the customer pays all charges incurred in connection with the use of such means . . . (direct access)." (emphasis added). In All America Cables & Radio, Inc., 15 FCC 293 (1950), we permitted customers to file overseas messages directly with the IRCs so long as the customers pay the charges associated with the use of domestic communications networks. For customers located within the gateway cities, we permitted the IRCs to absorb the usage charges so as to bring direct access into conformity with the IRCs general practice of free pickup and delivery in the gateway cities. We included the cited language to make clear that direct access traffic is included in routed traffic for purposes of calculating carrier quotas under the interim formula. As such, we did not intend to alter past Commission policy in this respect. Inasmuch as present Commission policy permits the IRCs to absorb usage charges in connection with gateway direct access, the language in paragraph IV (b) should not be taken as an intention now to require such customers to pay those charges. Further,

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14/ See Report and Order, 57 FCC 2d 190, at paragraph 18, Table 2.

traffic filed over the affected domestic networks by gateway-city customers will be considered as specifically-routed traffic, since it was filed with a specific IRC. Since the purpose of including the direct access provision in the formula was only to list the classes of traffic which would be considered specifically routed, it was not intended as a definition of direct access or a rule setting forth the criteria for its use; and we therefore believe it unnecessary formally to amend the language. 15/

III. WU MOTION FOR CLARIFICATION

26. On March 5, 1976, WU filed a contingent motion for clarification in which it noted that in accordance with our January 7 Report and Order it had invested in the new facilities and hired additional personnel necessary for implementing the interim formula. WU had undertaken these matters in the belief that the interim formula would become effective on March 21, 1976. 16/ WU now seeks clarification of our February 26 stay order to make explicit that it will be reimbursed for all increased expense resulting from the stay. Comments on WU's Motion were filed by ITT, RCA and TRT. We believe that since WU is a disinterested party in the present dispute it would be unreasonable to burden it with the start-up costs it incurred in good faith in anticipation that the interim formula would become effective on March 21, 1976. It was beneficial for all concerned to allow us time to consider RCA's and WUI's arguments and to resolve any doubt as to the interim formula. Inasmuch as all the IRC parties have benefitted from our review, we believe that all should bear a portion of the WU costs. We believe the most equitable basis for apportioning the costs is in proportion to the amount of traffic each carrier will receive under the initial quotas. This is the way costs were to be apportioned at the time WU began its preparations for

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15/ We do believe, however, that the provision should be part of the interim formula for the purpose of listing categories of specifically-routed traffic to which it applies. We express no opinion by this inclusion as to the propriety of present direct access policy. If in the future we have occasion to re-examine the policy, we will face the question of amending the formula in connection with any action we may then take.

16/ WU had sought extension of the effective date from the original March 1, 1976 date to permit its preparations. This request was mooted by our order of February 26, 1976, 58 FCC 2d 266, staying the effective date indefinitely.

implementing the interim formula and the way costs will be apportioned during the operation of the formula. This will thus obviate the necessity of segregating costs incurred before March 21, 1976 from those arising thereafter and avoid disputes as to the allocation made. 17/

27. Accordingly, IT IS ORDERED that the Petition for Stay in the above-captioned matter filed by RCA Global Communications, Inc. is hereby DENIED.

28. IT IS FURTHER ORDERED that the Petition for Reconsideration in this matter filed by Western Union International, Inc. is to the extent provided for herein, GRANTED but, otherwise, is DENIED in all respects;

29. IT IS FURTHER ORDERED that the Petition for Extension filed in this matter by the Western Union Telegraph Co. is DISMISSED;

30. IT IS FURTHER ORDERED that the Stay issued in this matter shall CONTINUE until RCA Global Communications shall have had an opportunity to obtain a ruling from the Court of Appeals, on condition that RCA renews its pending Petition for Stay filed in that court within five days of the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Vincent J. Mullins
Secretary

17/ RCA is also seeking a stay from the Court of Appeals. As we indicated in our prior stay order, we would continue the stay until RCA has had a reasonable opportunity to get a determination from the reviewing court.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act	)	Docket No. 19660 RM-690

To: The Commission

PETITION FOR RECONSIDERATION

Western Union International, Inc. (WUI) hereby petitions the Commission for reconsideration of its Report and Order and Notice of Proposed Rulemaking (Order), released January 7, 1976, to the extent that such Order: (1) requires that the formula governing the distribution of unrouted messages transferred from the Western Union Telegraph Company (WUTelCo) to the international record carriers (IRC's) includes traffic picked up directly by the IRCs in their gateway offices in the "routed" traffic base that determines the proportion of unrouted traffic to be received by each IRC; (2) abruptly abrogates a 30-year continuing formula with resulting sharp revenue shifts among the IRCs, merely by administrative fiat; and (3) appears to require WUTelCo Telex and TWX subscribers located in WUI's gateway cities to bear the cost of transmission

between their terminals and WUI's operating offices for the purpose of filing and receipt of international cablegrams. In support of its petition WUI respectfully submits as follows:

USE OF GATEWAY PICKUP TRAFFIC

1. In its Order herein, the Commission determined that unrouted message traffic filed by the public with WUTelCo should be allocated among the IRC's in the proportion that routed traffic carried by each IRC bears to the total traffic to each destination point.* WUI requests the Commission to redefine the "routed" traffic base, for the purposes of the formula, to exclude all traffic picked up directly by the IRC's over the counter, by tieline or by telephone in their respective gateway offices.

2. Neither TRT Telecommunications Corp. (TRT) nor ITT World Communications Inc. (ITT), the principal proponents of a change in the formula, advocated the use of IRC direct gateway pickup traffic in the base

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* WUI does not agree with the Commission's adoption of the general concept of using routed traffic to govern the distribution of unrouted traffic for the reasons specified in WUI's prior pleadings herein; and the Commission is requested to reconsider its general concept.

governing distribution of unrouted traffic by WUTelCo. The formula was originally promulgated pursuant to Section 222(e) of the Communications Act of 1934, as amended. This provision required the "merged carrier" (i.e. WUTelCo) to distribute traffic to the international record carriers in accordance with a formula to be approved by the Commission. Clearly, WUTelCo can only distribute traffic which it has received from its own customers, and Section 222(e) relates to this traffic, not the traffic filed directly with the IRCs in their gateway offices.

3. The Commission's Order failed to give appropriate recognition to the fact that the IRC's compete in two essentially different markets: (a) one consisting of that portion of the public which has no convenient access to the IRCs except through the facilities of WUTelCo (the hinterland/WUTelCo market); (b) another consisting of that portion of the public which has immediate and convenient access to the IRC's in their gateways (the gateway/IRC market). The customers in the gateway/IRC market file their traffic over the counter, by telephone and by tieline directly to the IRC's, while the hinterland/WUTelCo market accesses the IRC's only through WUTelCo's facilities.

4. The hinterland/WUTelCo market is distinctly different, geographically and conceptually, from the gateway/IRC market. It might be argued, as the Commission did, that routed messages should govern the distribution of unrouted messages in the hinterland where the IRCs have no direct operational presence. WUTelCo is the initial recipient of both routed and unrouted messages in the hinterland. However, messages received directly by the IRCs in the gateways do not have any WUTelCo nexus--an indispensible and logical requirement for relevancy to formula distribution quotas. Moreover, the IRCs might be motivated to open additional unjustified public gateway offices for their influence on the distribution by WUTelCo of unrouted hinterland traffic, thus resulting in wasteful allocation of carrier resources.

5. None of the parties to this proceeding had any notice of the proposed inclusion of IRC gateway pick-up traffic in the formula base until the Commission's Order was released, and had no opportunity to comment.*

6. The Commission's adoption of a rule incorporating features of which WUI had no notice, and which affect its interests, violates §222(e)(1), which requires

* See paragraph 41 of the Order wherein the Commission declined to abrogate a benefit outstanding to WUTelCo because it did not address this issue in its pleadings.

"due notice and hearing" before the Commission may prescribe a formula, and §222(e)(3). which requires "a full hearing" before the Commission may prescribe revisions in the formula. Since this is a rulemaking proceeding, the Commission's Order is also a violation of §553(b) of the Administrative Procedure Act, 5 U.S.C. §553(b), which requires notice of the "terms or substance of the proposed rule or description of the subjects and issues involved". No notice of the proposed use of gateway pickup traffic to control allocation of unrouted traffic was given. Similarly, the Order violated Section 553(c) of the APA, 5 U.S.C. §553(c), since interested persons obviously had no opportunity to submit "written data, views or arguments" on a matter of which they had no notice.

7. The only reason cited by the Commission for inclusion of direct pick-ups is that:

> "This is the most likely way to achieve the goal of distributing unrouted traffic on the same basis as routed. Direct pickups are by definition specifically routed and represent a significant portion of overall traffic. Therefore, to ignore such traffic would be unrealistic and contrary to our overall policy herein." Order, Paragraph 51.

8. This language is inadequate to justify inclusion of direct pickup traffic. The Order does not explain why the exclusion of such traffic would be contrary to the Commission's overall policy. Nor does the Order explain how direct IRC gateway pickups, in which WUTelCo is never involved, are relevant to a totally distinct market relationship between WUTelCo and the public. It is the latter relationship that produces unrouted international message traffic, whose distribution is subject to the formula.

9. The inclusion of direct pickup traffic would result in a significant and unjustified prejudice to WUI. At the time that WUI was authorized to acquire WUTelCo's international operations, the formula was amended to reflect the fact that WUI had no public offices. The formula gave WUI the right to all traffic, not otherwise routed, filed with WUTelCo in Manhattan south of 60th Street. At that time, WUTelCo had 85 offices south of 60th Street.* All messages not otherwise routed filed in these offices were deemed specifically routed via WUI. Additionally, WUI was entitled to all of the traffic filed with WUTelCo's telephone acceptance bureau at 60 Hudson Street, and all traffic filed by tielines which terminated south of 60th Street.

* Western Union Divestment, 30 FCC 323, 380 (1961).

10. Since 1963 there has been a drastic erosion of traffic received by WUI from all three of these sources. The 85 public offices have shrunk to only three. The Hudson Street telephone acceptance bureau has been closed and all telephone-filed traffic is received at WUTelCo's Moorestown, N.J. Central Telephone Bureau, and is not considered by WUTelCo as automatically routed via WUI. The tielines that were terminated in Manhattan have now been almost completely diverted to telex or reterminated elsewhere. Public message traffic filed over such tielines is now considered by WUTelCo to be received in its computer center in Middletown, Virginia, and is not automatically routed via WUI. Notwithstanding this reduction in its direct pickup facilities in Manhattan, WUI was and still is prohibited by the terms of its Domestic Facilities Agreement with WUTelCo from opening its own gateway offices.

11. Thus WUI is at a severe competitive disadvantage with respect to such traffic. However, the Domestic Facilities Agreement expires by its own terms on September 30, 1976. Thereafter, WUI will be able to open its own gateway public offices. Of course, a subsequent substantial time period will be required for WUI to develop its own customer

base comparable to its long-entrenched competitors, RCA and ITT.*

12. At the present time, the IRC's report to the International Quota Bureau (IQB) the total of all traffic received directly by them, including both traffic filed with their public offices and telephone bureaus, and direct access traffic received by telex and TWX from WUTelCo subscribers. Since the direct access traffic comes from the same population of hinterland/WUTelCo customers as does the WUTelCo transfer routed and unrouted traffic, it is logical and appropriate to include the direct access traffic from WUTelCo telex and TWX subscribers in the "routed" traffic used to distribute the unrouted traffic. However, the IRC's do not provide a break-down between their gateway pick-up traffic (which should be excluded from the formula calculations), and the direct access traffic (which should be included). Therefore WUI requests the Commission to direct the IRCs to report their direct access traffic separately to the IQB in order to permit it to calculate the proportions to which each IRC is entitled. This data should be readily available for any recent period that the Commission might

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* The approaching expiration of the Domestic Facilities Agreement eliminates the need for any action respecting the disposition of WUI public offices, referred to in paragraph 41 of the Order, and largely moots the thrust of paragraphs 37 through 41 of the Order.

designate, including the period of the WUTelCo study of transfer traffic.

13. To permit implementation of the new formula, the Commission should require the IQB to calculate the IRC's quotas based solely upon the proportion of routed transfer traffic to total transferred by WUTelCo as a preliminary measure, effective until the IQB is able to calculate quotas based upon transfer and direct access traffic. The new formula ordered by the Commission can be implemented upon this basis. The quotas can be adjusted promptly upon the receipt of the data from the IRCs relating to its direct access traffic. (The alternative temporary measure of allocating unrouted traffic upon the basis of all traffic including IRC gateway pick-up traffic, while technically feasible, would perpetuate the discrimination against WUI described above).

THE INTERIM FORMULA SHOULD BE PHASED IN

14. The current formula has been in operation for over 30 years. The IRCs have invested in physical plant, programmed their computers and arranged their operating procedures, based upon the traffic flow that is predictable on the basis of this long experience with the formula. They have based their financial projections in part upon the traffic expected under the present formula. Similarly, WUTelCo

has programmed its computers and arranged its operations based upon the method of distribution of traffic contained in this formula. In particular, WUTelCo has programmed its massive computer complex at Middletown, Virginia and set up the quota distribution center at Minneapolis, Minnesota, based upon this formula. Overall, the formula has greatly influenced the international record industry in many areas, and cannot be suddenly changed with causing disruptions.

15. However, the Commission's Order requires that the interim formula be placed into effect by March 1, 1976. At one stroke, all of the arrangements and expectations of the IRCs and WUTelCo based upon the present formula will become obsolete and will have to be extensively modified. At no time has the Commission ever stated any reason why the interim formula must be placed into effect on such extremely short notice, and a transition period to permit proper preparation is essential. To permit an orderly, efficient and economical implementation of the interim formula, and to permit WUI to compete on an equal basis with its competitors, WUI requests reconsideration of its effective date and requests a postponement to January 1, 1977.

16. At a meeting of the interested carriers at the Commission's offices on February 3, 1976, WUTelCo stated that it planned to implement the formula on a completely

computerized basis, but that it would take approximately nine months to program its computer to cope with the interim formula. In the meantime, WUTelCo proposed to make extensive alterations in the Minneapolis distribution center and to hire several extra operators to handle the increased load resulting from the fact that traffic destined to formerly exclusive points will have to be distributed on a message by message basis. WUTelCo stated that the additional one-time cost would run in excess of $12,000, and the additional labor costs would be at the rate of $150,000 to $200,000 per year. In order to achieve implementation of the interim formula on an immediate basis, it said that it was willing to train the additional operators as rapidly as possible, but that even so it would not be able to implement the new formula at least until March 21, 1976.

17. The need for such haste is not apparent. It does not make much sense to implement the interim formula manually with hastily trained operators while programming of the computers is continuing. It is reasonable to expect under these circumstances that not only will unnecessary expenses be incurred but the quality of service provided by inexperienced operators will suffer. A postponement to January 1, 1977, will allow WUTelCo the time it needs for computerization and eliminate

the waste and risk of service delays inherent in an augmented manual operation.

18. As pointed out above, WUI has no public offices, and under the terms of the Domestic Facilities Agreement with WUTelCo, will not be permitted to open its own offices until after September 30, 1976. It will take some time for WUI thereafter to open its offices and develop customer awareness and acceptance of these offices. The three-month period from October 1, 1976 to January 1, 1977 is the bare minimum needed to prepare to compete for traffic. Thus, in the event that the Commission does not grant the relief requested by WUI in the preceding section (exclusion of gateway/IRC traffic from the base of routed traffic used to determine distribution), a postponement of the effective date of the interim formula to January 1, 1977 will be necessary to give WUI an opportunity to compete on an equal basis.

GATEWAY DIRECT ACCESS

19. The formula attached as an appendix to the Order defines various categories of messages as specifically routed. Paragraph IV (b) refers to messages filed with the IRCs at their gateway offices "by means of domestic communications networks such as domestic telex,

TWX, telephone, or mail, or by messenger so long as the customer pays all charges incurred in connection with the use of such means for the purpose of filing international messages (direct access)".

20. This definition of direct access ignores the difference, recognized by the Commission, between users of the domestic telex and TWX system located in the gateways and those located in the hinterland. In The Western Union Telegraph Company, 32 FCC 2d 752 (1971), the Commission ordered WUTelCo to

> "permit telex users located within the gateway cities to directly access the international carriers located therein for the filing and receipt of international messages with the telex charges being paid by the international carriers as are TWX charges under currently similar circumstances". 32 FCC 2d at 756.

21. It is believed that the failure to differentiate between gateway and hinterland telex and TWX subscribers (and similarly between gateway and hinterland users of other communications networks such as telephone and mail) was inadvertent, and no change in the Commission's policy regarding direct access from customers located in the gateways was intended. Accordingly, WUI requests the Commission to amend paragraph IV (b) of the Appendix to the Order to indicate that such gateway customers are not required to absorb the cost of direct access.

In addition, there is no reason to engraft the paid direct access procedure into the message quota formula. In the future the Commission may wish to shift from a paid direct access to a free direct access policy. Therefore, there is no basis to encumber this formula with either policy.

WHEREFORE, Western Union International, Inc. hereby respectfully requests the Commission to reconsider its Report and Order and Notice of Proposed Rulemaking herein, released January 7, 1976, and to: (1) amend the formula by including in the routed traffic base used to allocate unrouted traffic only routed transfer traffic and direct access traffic; (2) postpone the effective date of the formula to January 1, 1977; and (3) clarify that gateway customers using direct access to file or receive messages are not required to bear the cost of telex, TWX or telephone transmission.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Roger P. Newell
Its Attorney

1 WUI Plaza
New York, New York 10004

Dated: February 11, 1976

CERTIFICATE OF SERVICE

I, Burnadine Diggs, do hereby certify that a copy of the foregoing "Petition for Reconsideration" of Western Union International, Inc. has been sent by United States mail, postage prepaid, to the following:

Joseph J. Jacobs, Esq.
ITT World Communication Inc.
67 Broad Street
New York, New York 10004

Carl J. Cangelosi, Esq.
RCA Global Communications, Inc.
60 Broad Street
New York, New YOrk 10004

Rodger M. Sanders, Esq.
RCA Global Communications, Inc.
60 Broad Street
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Roderick Mette, Esq.
TRT Telecommunications Corporation
1747 Pennsylvania Avenue, N.W.
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Jack Werner, Esq.
The Western Union Telegraph Company
1828 L Street, N.W.
Suite 1001
Washington, D.C. 20036

Mr. J. A. Berenger
The French Telegraph Cable Company
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New YOrk, New York 10004

United States-Liberia Radio Corporation
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Mr. D. N. MacLeod, General Manager
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Mr. L. F. Swaine
Canadian Pacific Railway Co.
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26 Broadway
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William D. English, Esq.
Vice President & General Counsel
Comsat General Corporation
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024

/s/ Burnadine Diggs

Dated: February 11, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 76-192
39605

In the Matter of	)	
	)	
INTERNATIONAL RECORD CARRIERS' SCOPE OF OPERATIONS IN THE CONTINENTAL UNITED STATES INCLUDING POSSIBLE REVISIONS TO THE FORMULA PRESCRIBED UNDER SECTION 222 OF THE COMMUNICATIONS ACT	)	Docket No. 19660 RM-690

ORDER

Adopted: February 26, 1976; Released: March 5, 1976

By the Commission: Commissioner Hooks and Quello absent.

1. On January 7, 1976, we issued a Report and Order and Notice of Proposed Rulemaking in the above-captioned matter, FCC 75-1430, _____ FCC 2d ____, in which we (a) found the formula governing distribution by The Western Union Telegraph Co. (WU) among the international record carriers (IRCs) of outbound unrouted international message telegraph traffic (international formula) which we had prescribed in 1943 pursuant to 47 U.S.C. §222(e)(1) (1971), is unjust, unreasonable, inequitable and not in the public interest, (b) instituted an inquiry into the legal, economic and operational implications of placing distribution of such traffic on the basis of required customer routings 1/ and (c) pending outcome of the above inquiry, prescribed an interim distribution of outbound traffic (interim formula) to become effective upon repeal of the present international formula on March 1, 1976.

2. The Commission has before it for consideration the following petitions and motions, addressing the above Report and Order:

(a) A Petition for Reconsideration filed by Western Union International, Inc. (WUI) on February 11, 1976, seeking, inter alia, postponement of the effective date of the interim formula until January 1, 1977;

(b) A Petition for Stay filed by RCA Global Communications, Inc. (RCA) on February 11, 1976 seeking a stay

1/ Our action herein will not affect that inquiry or the timetable for its prosecution set forth in the above Report and Order.

pending review of our Report and Order in the Court of Appeals; 2/ and

(c) A Motion for Extension filed by WU on February 19, 1976 seeking extension until March 21, 1976 of the date for implementing the interim formula in which WU states that it needs the extra time to complete modifications of its facilities and the augmenting and training of its personnel necessary to implement the interim formula. 3/

3. Under our rules, the filing of a petition for reconsideration does not itself suspend the effectiveness of a Commission order for which reconsideration is sought. See Section 1.429(k) of the Commission's Rules, 41 F.R. 1286, January 7, 1976. However, in the exercise of our discretion, we believe that the public interest will be best served by staying the effectiveness of our January 7 Report and Order until we have resolved the matters raised in the above petitions. In the first instance, we believe that WU has justified its request for additional time to prepare for implementing the interim formula and that the three-week period requested is reasonable. 4/ Beyond this, moreover, we believe that a stay will be conducive to the orderly resolution of the formula matter. In their respective petitions, both RCA 5/ and WUI raise specific challenges to our Report and Order which, because of the

2/ RCA filed on February 13, 1976 a Petition for Review with the United States Court of Appeals for the Second Circuit, RCA Global Communications, Inc. v. FCC, Docket No. 76-4054, in which it seeks reversal of our January 7 Report and Order.

3/ Although not so denominated, both the WUI and the WU requests for postponement of the effective date of the interim formula procedurally amount to petitions for stay of our Report and Order and will be so treated.

4/ In view of our action herein, however, we need not act on the WU Petition at this time. If we have resolved the other matters discussed herein before March 21, 1976, there will be time to take appropriate action on that request. We expect WU to continue its preparations expeditiously so that it will be able to implement the interim formula without delay.

5/ The RCA Petition for Stay was opposed by ITT World Communications Inc. and TRT Telecommunications Corp. Since we are deferring action on RCA's petition we need not consider the arguments of the opponents until we consider that petition.

common subject matter, we believe should be considered together. However, because of the notice and comment provisions of Section 1.429(g)-(h) of our rules, we will not be able to act on the WUI petition before the March 1 effective date. Consolidated handling is particularly desirable in the present instance because RCA has sought judicial review of our Report and Order. Since RCA raised essentially the same matters before us in its Petition for Stay as those before the court in its Petition for Review, we believe it important that the court have the benefits of our consideration of those matters. Therefore, to allow WU additional time for its preparation and facilitate orderly review of our Report and Order, we will stay the effectiveness of our Report and Order pending resolution of the WUI and RCA petitions. 6/

4. Accordingly, IT IS ORDERED, on our own motion, that paragraphs 63 and 65 of the above-referenced Report and Order and Notice of Proposed Rulemaking are hereby STAYED until further order of the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Vincent J. Mullins
Secretary

6/ We are acting here on our own motion and do not express any opinion on the merits of those petitions. If, after we have completed our review, we should deny RCA's Petition for Stay, we will allow it opportunity to seek a stay from the reviewing court.

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

- x

RCA GLOBAL COMMUNICATIONS, INC.,

Petitioner,

-against-

FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA,

Respondents,

and

THE WORLD COMMUNICATIONS INC. and THE TELECOMMUNICATIONS CORPORATION,

Intervenors.

Docket No. 76-4054

MOTION FOR ADJOURNMENT

- x

Upon the annexed affidavit of H. Richard Schumacher, verified on March 4, 1976, and all the prior proceedings had herein, the undersigned move this Court for the entry of an Order, in the form annexed, adjourning the return date of Petitioner RCA Global Communications, Inc.'s motion for a stay, now returnable on March 9, 1976 and annulling the civil appeals scheduling order issued in this Docket under date of February 24, 1976.

New York, New York
March 4, 1976

CAHILL GORDON & REINDEL

By _____
H. Richard Schumacher
A Member of the Firm
Attorney for Petitioner
RCA Global Communications, Inc.

ASHTON HARDY
General Counsel, Federal Communi-
cations Commission

By _____
Jack Smith, Attorney
Attorney for Respondent
Federal Communications Commission

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

- X

RCA GLOBAL COMMUNICATIONS, INC.,

Petitioner,

-against-

FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA,

Respondents,

and

ITT WORLD COMMUNICATIONS INC. and THE TELECOMMUNICATIONS CORPORATION,

Intervenors.

Docket No. 78-4054

AFFIDAVIT

- X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

A. RICHARD SCHUMACHER, being duly sworn, deposes and says:

1. I am a member of Cahill Gordon & Reindel, attorneys for Petitioner RCA GLOBAL COMMUNICATIONS, INC. ("RCA Globcom") and am familiar with the matters here set forth. I submit this affidavit in support of a joint motion by RCA Globcom and respondent FEDERAL COMMUNICATIONS COMMISSION ("FCC" or "the Commission") for an Order with respect to scheduling in this docket.

2. On February 11, 1976 RCA Globcom filed a petition to review an Order which the FCC released in its Docket 19650 on January 7, 1976. The Order, inter alia, directed a revision, effective March 1, 1976, of a formula governing the distribution by The Western Union Telegraph Company of certain telegraph traffic to, among others, RCA Globcom, intervenors ITT World Communications Inc. ("ITT Worldcom") and TRT Telecommunications ("TRT"), and Western Union International, Inc. ("WUI").

3. On February 24, 1976 Staff Counsel Fensterstock issued a Civil Appeals Scheduling Order in this Docket. A copy is annexed as Exhibit A.

4. On or about February 25, 1976 RCA Globcom served and it has since filed a motion for a stay of the Commission's Order of January 7, 1976. The motion now is returnable on March 9, 1976.

5. During February, the FCC received motions from RCA Globcom, Western Union and WUI suggesting, variously, that the Order of January 7, 1976 be stayed pending judicial review, that its effective date be deferred, and that its terms and effective date be reconsidered by the Commission.

6. Last week, we are advised by the Commission's Common Carrier Bureau, the Commission adopted a further order staying the effect of its January 7 Order pending further proceedings before the Commission. This Order is due to be "released" (i.e., publicly published) this week after clerical

processing at the Commission. We will supply a copy for the Court's file when it is available.

7. Under the circumstances, it seems appropriate that RCA Globcom's stay motion and other proceedings in this Docket be adjourned pending the completion of the further proceedings contemplated by the Commission. We are submitting with this motion a proposed Order which will, we believe, accomplish this objective efficiently.

8. The papers heretofore served and filed by RCA Globcom in support of its stay motion include copies, made at considerable expense, of large portions of the record made before the Commission in its Docket 19660. These papers are likely to be pertinent to any further proceedings in this Court. To avoid the need for further expensive duplication on a later date, the motion should be kept alive as a vehicle which can be reactivated on reasonable notice with such supplementation of the filed papers as may be appropriate at the time.

9. I am authorized by Jack Smith, Esq. of the office of the General Counsel of the FCC, to state that the Commission and the United States concur in this request for the relief sought by the present motion. I have consulted with counsel for intervenors ITT Worldcom and TRT who have authorized me

to say that they have no objection to the Order proposed by this motion.

H. Richard Schumacher

Sworn to before me this
4th day of March, 1976.

Notary Public

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

RCA GLOBAL COMMUNICATIONS, INC., Petitioner, -against- FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA, Respondents, and TRT WORLD COMMUNICATIONS INC. and ITT TELECOMMUNICATIONS CORPORATION, Intervenors.	Docket No. 76-4054 ORDER WITH RESPECT TO SCHEDULING

Upon the motion of Petitioner RCA GLOBAL COMMUNICATIONS, INC. and of respondent FEDERAL COMMUNICATIONS COMMISSION and the affidavit of H. Richard Schumacher, verified March 4, 1976, and good cause appearing,

IT IS ORDERED:

1. Petitioner's motion for a stay of the Order released by the Federal Communications Commission in its Docket 19528, on January 7, 1976, which motion now is returnable before this Court on March 9, 1976, is adjourned *sine die*.

2. Petitioner may restore the said motion to the

calendar by notice of the kind required to notice such a motion in the first instance and, in the event of such restoration, may serve with its notice such additional papers as it deems appropriate.

3. The Civil Appeals Scheduling Order issued in this Docket under date of February 24, 1976 is annulled, and further proceedings in this Docket shall be held in abeyance pending further Order by this Court or its authorized representative.

4. Counsel for petitioner and counsel for respondent Federal Communications Commission shall promptly advise the Staff Counsel of further actions by the said Commission affecting its Order of January 7, 1976, and the Staff Counsel shall, in the light of such advice, enter such further scheduling order as may be appropriate and reasonable in the circumstances.

At New York, New York
March 5, 1976

U.S. Circuit Judge

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act	)	Docket No. 19660 RM-690

To: The Commission

CONTINGENT MOTION FOR CLARIFICATION

The Western Union Telegraph Company (Western Union) respectfully moves this Commission to clarify its stay order, entered herein on February 26, 1976 (but not yet released), to make explicit -- if it does not already do so -- that Western Union is entitled to be reimbursed for any increased expense incurred as a result of a continuation of the stay beyond March 21, 1976. In support of this contingent motion Western Union states as follows:

On ~~January~~ February 19, 1976, Western Union filed a motion requesting a three-week extension (until March 21) of the deadline for the implementation of the new interim formula governing the distribution of unrouted international cablegram traffic (as established in the Commission's Report and Order

and Notice of Proposed Rulemaking, released January 7, 1976, F.C.C. 75-1430). Western Union pointed out that the new "interim formula" established by the Commission would double the number of messages that had to be sorted and tallied by hand at Western Union's Minneapolis facility; that in order to handle the increased volume of traffic it would have to (a) modify and expand its facilities at Minneapolis and (b) hire and train seven additional employees; and, that it would not have the facilities and manpower needed to administer the new formula until March 21. Western Union further pointed out that the necessary preparations "have already commenced and are proceeding without delay. . . ."

~~Thereafter,~~ on February 11, 1975, RCA Global Communications filed a petition requesting that the Commission stay its formula decision pending judicial review by the Second Circuit. On that same day, Western Union International petitioned the Commission for reconsideration of its decision and requested that the effective date of the interim formula be postponed until January 1, 1977. Western Union did not oppose either petition.

On February 27, 1976, the Commission released a Public Notice (Report No. 11669) advising that in an order adopted the preceding day the Commission "stayed until further notice the March 1 effective date for implementation of [the] interim formula . . . ." The Public Notice stated that

> "[T]he Commission found in the exercise of its discretion, that the public interest would be served best by staying the effectiveness of the January 7 Report and Order until the matters raised in the petitions [of RCA and WUI] have been resolved."

The stay granted by the Commission was thus of indefinite duration, and it very well may not be vacated by March 21.

At the time the Commission released the Public Notice informing the parties that the stay had been granted, the March 21 target date of Western Union for implementation of the new interim formula was only about three weeks away. Western Union had already completed -- and this progress was necessary if the March 21 deadline was to be met -- much of the preparation required to distribute cablegram traffic to the IRCs in accordance with the new formula. Specifically, Western Union had begun preparations to install new equipment at its Minneapolis facility and had hired the seven additional employees needed to sort the increased volume of traffic. Because the stay ordered by the Commission is indefinite, Western Union is continuing its preparations at Minneapolis, including the training of the seven additional employees it has hired.

In its Report and Order and Notice of Proposed Rule Making (FCC 75-1430), the Commission made clear (p. 30) that Western Union "should be reimbursed for the reasonable costs it incurs in effecting distribution of cablegram traffic to the IRCs." This would plainly include any reasonable start-up costs incurred by Western Union prior to the time it actually begins to distribute traffic under the new formula.

Western Union is, of course, already incurring costs as a result of its obligation to administer the new formula. For example, it must pay the salaries of the seven new employees that have been hired and are now being trained. Under the new formula, the salaries of these employees as well as other expenses will continue to be incurred regardless of whether the new formula is actually placed in effect on March 21 or stayed beyond that date.

Manifestly, any stay beyond March 21 would result in increased and, in a sense, unnecessary start-up costs for Western Union. The Commission's stay order has not yet been released and we have no way of knowing whether this order makes explicit the fact that Western Union is entitled to reimbursement for such increased costs. If the stay order does not so provide, we believe it should be clarified to acknowledge Western Union's right to reimbursement -- either from all of the IRCs who receive traffic distributed under the new interim formula, or, perhaps, only from those IRCs who have sought a postponement of the for date implementing the new formula beyond March 21 -- for any increased costs incurred as a result of a stay after that date. Western Union cannot and should not be expected to continue to incur substantial expenses to accommodate the IRCs unless it will be able to recover those expenses without delay.

WHEREFORE, Western Union expressly requests that if the stay order entered February 26 does not already so provide, it be clarified to make explicit that Western Union is entitled to reimbursement for any increased expense incurred as a result of a continuation of the stay in implementing the new interim formula beyond March 21, 1976.

Respectfully submitted,

THE WESTERN UNION TELEGRAPH COMPANY

By _____
Joel Yphalem

_____
Leon M. Kestenbaum

1828 L Street, N. W.
Washington, D. C. 20036

Its Attorneys

Of Counsel:

R. C. Hostetler, Esq.
One Lake Street
Upper Saddle River, N. J. 07458

March 5, 1976

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document, filed with the Federal Communications Commission on behalf of The Western Union Telegraph Company, by United States mail, first class postage prepaid, on the following:

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Federal Communications Commission
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_____
Albina Karen Olson

Dated: March 5, 1976

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed Under Section 222 of the Communications Act.	)	Docket No. 19660 RM-690

To: The Commission

OPPOSITION TO PETITION TO STAY

ITT World Communications Inc. (ITT Worldcom) hereby opposes the petition filed in the above captioned matter by RCA Gobal Communications, Inc. (RCA Globcom) requesting the Commission to stay the effectiveness of its order prescribing a revised International Formula (Formula Order).[1/] As will be shown hereafter, RCA Globcom has completely failed to sustain its burden of showing that the extraordinary relief of a stay of the Commission's Formula Order was merited. Accordingly, the RCA Globcom petition should be dismissed or denied by the Commission.

1/ Report and Order and Notice of Proposed Rulemaking, released January 7, 1976, Docket No. 19660, FCC 75-1430.

As recognized by RCA Globcom, the established criteria which must be met before a stay of a Commission order should be issued are:

1. A strong likelihood of prevailing on merits of appeal,

2. A showing of irreparable injury to petitioner if stay is not granted,

3. Absence of substantial harm to other interested parties if a stay were granted, and

4. A showing that stay would be consistent with the public interest. 2/

Nonetheless, while recognizing the existence of these criteria, RCA Globcom has singularly failed to show that its cause satisfies those criteria. Most importantly, RCA Globcom has failed to show any error in the Commission's decision, and thus, there would be little, if any, chance that it will succeed in having that decision reversed on appeal. 3/

2/ See, for example, Virginia Petroleum Job. Assn. v. F.P.C. 259 F. 2d 921, 925 (D.C. Circuit, 1958).

3/ Indeed, as should become obvious hereafter, RCA Globcom's appeal is little more than a sham filed for the sole purpose of preserving for some further period of time RCA's disporportionate share of unrouted traffic under the existing formula.

The Commission's Decision Is Sound, Well Reasoned, And Supported By The Evidence Of Record.

In attempting to show reversible error in the Commission's Formula Order, RCA Globcom has contended that the Commission's findings and conclusions are arbitrary and capricious and not supported by the record. In addition, RCA Globcom has claimed error in the Commission's determination not to grant RCA Globcom's request for an oral evidentiary hearing. Neither of these contentions will stand serious scrutiny.

Section 222(e)(3) of the Communications Act establishes criteria for the Commission's review of the International Formula when it determines that the existing formula is unjust, unreasonable, or inequitable, or not in the public interest. In that event, the Commission is required to prescribe a new formula which will be just, reasonable, equitable and in the public interest. In its instant petition, as well as in its prior submissions in this matter, RCA Globcom has sought to ignore the criteria of justness, reasonableness and equitableness necessary to the lawfulness of a particular formula, and by selective juxtaposition of various statements in the Commission's decision, often taken out of context, has argued that a finding that the existing formula was not in the public interest count not reasonably be made from this Commission decision.

It is apparent from even a casual reading of the Formula Order, that the Commission while certainly finding that the existing formula did not operate in the public interest, predicated its decision as to the unlawfulness of that Formula largely on the unjust, unreasonable and inequitable distribution of unrouted traffic among the participating International record carriers, and the conceptual flaws in the formula which caused this distribution.

The simple and uncontested traffic statistics from the traffic study performed by the Western Union Telegraph Co. (Western Union) show the gross distortion from any standard of justness, reasonableness and equitableness, which characterize the present unrouted traffic distribution. These statistics alone would provide a sufficient basis for the Commission's finding of unlawfulness of this Formula. This distortion in unrouted distribution is particularly evident as between ITT Worldcom and RCA Globcom, which in all other respects, including share of routed message traffic, are approximate equals, but in the distribution of unrouted traffic pursuant to this Formula. RCA Globcom receives almost 50 percent of that traffic (out of 5 carriers participating in this formula), while ITT Worldcom receives only about 11 percent of that traffic (Formula Order, para. 17, pp. 12-13).

RCA Globcom has never suggested any reason why it should be so heavily favored, nor ITT Worldcom so severely prejudiced, in the distribution of traffic from a pool which by definition has had no preference, expressed by the sender, as to carrier by which the message should be routed. The Commission clearly was correct in its determination that such distortions were not consistent with the criteria of Section 222.

The Commission did not stop, however, with simply recognizing that the unrouted traffic statistics shown by the Western Union study conclusively established the unjustness, unreasonableness and inequitableness of the existing formula. It went on to further analysis of those statistics, as well as the existing distribution methodology. It also made a thorough review of the conceptual bases in the existing formula which have fostered the gross distortions in the present distribution of unrouted traffic. All of these analyses lead to the same indisputable conclusion- that the existing formula distribution of unrouted traffic is unjust, unreasonable, and inequitable and, thus, by statutory definition unlawful.

The Commission further considered the obvious disincentives of the existing formula and the danger that such may have stifled innovation and improvement in international message services, and as well. the special benefits for particular carriers in the existing formula---Schedule B, Appendix 1, and the gateway office arrangement between Western Union

International, Inc. (WUI) and Western Union---determining that they are clearly inconsistent with the dynamics of the strong, competitive international record carrier industry in the 1970's. In the end the Commission concluded, based on a reasoned and logical analysis of the record before it, that in addition to the clear failure of the existing formula to provide a just, reasonable and equitable distribution of unrouted traffic between participating IRCs, the results of continued use of this flawed formula were intrinsically contrary to the public interest and specifically at variance with the Commission's statutory mandate to guarantee residents of the United States a rapid, efficient communications service with adequate facilities and reasonable charges, (Formula Order para. 42-43, pp. 25-26).

RCA has also challenged the revised formula which the Commission has prescribed to replace the existing unlawful formula. In essence, RCA's arguments are that: (1) The revised formula would unnecessarily increase sales and marketing costs to the participating IRCs; (2) The revised formula would increase the administrative costs for Western Union and allegedly result in degraded service quality; and (3) The revised formula is only intended to be used for an interim period until an all-routed, non-formula can be implemented.

Whether or not RCA Globcom will, in fact, engage in it, threatened massive marketing effort upon implementation of the revised formula is a matter known only to that carrier. It would, ITT Worldcom submits, be a highly imprudent expenditure of funds and effort: but more importantly, whether it occurs or not, it has no relevance to the Commission's decision. That decision in no way prejudices RCA Globcom's competitive position in the market place for outbound international telegraphic messages. It adds no new competition for RCA Globcom. All that decision does is recognize that this is a competitive environment, pursuant to prior Commission decisions and policies, and determines that certain artificial barriers to equal competitive opportunity among the carriers already competing in this market should be abolished. RCA Globcom already has adequate incentive to solicit message traffic routed via its facilities. If it seriously believed that added solicitation efforts would have been cost effective, it would have already expended those efforts. The simple fact, however, is that the preponderance of the remaining unrouted traffic is believed to be "social" traffic which is characterized by very infrequent transmissions per user. This category of user is simply not considered reachable by ordinary IRC marketing efforts. In order to establish a "carrier consciousness" among those users would require an extensive and expensive nationwide advertising campaign which, it is submited, cannot be justified based on any reasonable expectation of increased traffic. The most credible marketing strategy here is the provision of superior service to

the user in the expectation that the chance or occasional user will become a confirmed user and may, by word of mouth, influence others to also use that carrier's facilities.

The cost increases, for the administrative services provided by Western Union, asserted by RCA are, at best, estimates which are subject to serious scrutiny by each of the participating IRCs. And, while no question exists that Western Union will incur some cost increases as a result of eliminating the "exclusives" in the existing formula with the result that this traffic will now have to be processed through the Minneapolis quota center, the Commission has already determined that the formula which produced those "exclusives" is unlawful, and they must therefore be eliminated. These increased Western Union costs then are simply a necessary by-product of the Commission's prescription of a lawful formula. 4/ In addition, the Commission has already provided that these costs be equitably shared among the participating IRCs, and Western Union has expressed interest in computerizing the formula distribution, which would largely eliminate those recurring administrative costs. Moreover, Western Union has informally

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4/ It is to be noted that all unrouted formula traffic has historically been processed through the Minneapolis quota center. The direct transmission of the "exclusive" traffic was only begun about three years ago, with the implementation of Western Unions ISCS computer at Middletown, Va.

proposed, as a cost saving measure, the elimination of country-by-country quotas to be replaced with a single world-wide quota, a concept with which ITT Worldcom has already expressed satisfaction in our August 28, 1975 Comments in this matter. The Commission could readily amend the revised formula in this respect upon the petition of an interested party.

RCA's argument that the revised formula will result in a degradation of service for the former "exclusive" traffic is similarly without merit. In the first place, ITT Worldcom seriously questions whether, in the context of the overall handling time for an overseas message, particularly the handling time at the overseas end, the alleged 20 minute delay in transit time resulting from processing the traffic through the Minneapolis center has any real significance to the user. More importantly, however, RCA Globcom is in effect arguing that the "exclusive" country users are receiving preferential treatment vis a vis other users under the existing formula, and that the Commission has an obligation to secure the continuation of this preference. This argument is so completely in conflict with the Commission's mandate to see that all carriers provide their service in such a manner as to avoid all unjust or unreasonable discrimination, and all undue or unreasonable preference, or prejudice as to make further rebuttal unnecessary.

RCA Globcom's challenge to the Commission's action in prescribing an "interim" revised formula is apparently predicated on the theory that the "problems" heretofore addressed would be eliminated if the Commission had avoided the prescription of the interim formula. Although we have already shown that RCA Globcom's "problem" arguments are without merit, the more important consideration is that the Commission had no option except to prescribe an interim formula. Fundamentally, the Commission has made three findings in the Formula Order: (1) That the existing formula is unlawful; (2) That, as a matter of policy, an all-routed "formula" should be adopted, but that the record did not provide an adequate basis for the prescription of such a formula; and (3) That a proportional distribution formula would be lawful and was supported by the record. Having found this existing formula unlawful, and that a lawful formula could be prescribed, Section 222 (e)(3) requires that the Commission shall prescribe such a lawful formula. That the Commission concurrently began a new rule-making preceeding addressed to the future prescription of an alternative lawful formula, and which is indefinite in both time and possible result, can have no bearing on either the lawfulness of the "interim" formula or the Commission's obligation to promptly prescribe that "interim" formula.

In sum, the RCA Globcom challenges to the Commission's findings as to the unlawfulness of the existing formula, and the prescription of a

revised formula are singularly devoid of merit. Indeed, even assuming arguendo that some of RCA Globcom's out of context nit-picks at the Commission's decision were meritorious, even the authorities cited by RCA Globcom in support of its "arbitrary and capricious" argument 5/ make clear that the Commission's decision here would be upheld. In Bowman, the Supreme Court stated that, "Under the 'arbitrary and capricious' standard the scope of review is a narrow one. A reviewing court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.... 6/ Similarly, the Court of Appeals (DC Circuit) stated in Nader that, "Our function is not to impose our own standards of reasonableness upon the Commission, but rather to ensure that the Commission's order is supported by substantial record evidence and is neither arbitrary, capricious, nor an abuse to discretion." 7/ The Court of Appeals also quoted with approval a decision of the District of Columbia Court of Appeals where that Court said, "Arbitrary action, however, is action not based on facts or reason. The burden upon petitioner is not merely to put forth an acceptable alternative but rather to demonstrate clearly and convincingly a fatal flaw in the action taken." 8/ Clearly, RCA Globcom has not met the test laid down by these

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5/ Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc. 419 U.S. 281 (1974), and Nader v. FCC, 520 F.2d. 182 (1975).

6/ Id at 285

7/ Id at 192

8/ Goodman v. Public Service Commission-309 A.2d 97 (1973).

tribunals. The Commission's Formula Order must stand.

There Was No Error In The Commission's Determination Not To Conduct A Full Evidentiary Hearing In This Matter

RCA Globcom continues to assert its alleged right to an evidentiary hearing in this matter, with the obvious purpose of delaying the implementation of a lawful formula. Try as it will, however, RCA Globcom remains unable to develop a suitable rational for requiring such an evidentiary hearing. The Commission has dealt with RCA Globcom's hearing request by pointing out that the Formula is a rule within the meaning of Section 551(4) of the Administrative Procedure Act(APA), and that this proceeding is consequently a rule-making for which, in accordance with Section 553 of the APA, a trial-type hearing is not required (citing Bell Telephone Company of Pa. v. FCC, 503 F.2d 1250 (1975).)

Even, however, if it were possible to conclude, through some stretch of imagination, that a trial-type hearing was conceptually appropriate to this formula proceeding, the court decisions have consistently applied the principle that an evidentiary hearing is not required where no material issues of fact are in dispute (see Reply Comments of ITT Worldcom, dated September 6, 1974, in this matter, pp. 15-17). And. there simply are no material issues of fact in dispute in this proceeding. In its instant petition, RCA Globcom

has dredged the bottom of its barrel and produced a list of nine alleged factual issues which it claims should have been addressed in the context of an evidentiary hearing. In addition to the infirmity that these alleged factual issues are raised for the first time by RCA Globcom in a Petition to Stay they are also largely irrelevant to the issues in this proceeding. Even where marginally relevant, these issues are more appropriately matters of policy, or in a few instances, matters which could not be "decisively resolved" in an evidentiary hearing.[9/] The Commission was clearly correct in refusing to conduct an evidentiary hearing in this proceeding.

RCA Globcom Has Failed To Satisfy Other Criteria For The Issuance Of A Stay As Well

While RCA Globcom's failure to establish any (much less strong) likelihood of prevailing on the merits of its appeal is absolutely fatal to its Petition for Stay, ITT Worldcom would nontheless show, for completeness of the record, that RCA Globcom has also failed to satisfy other criteria necessary to the issuance of a Stay.

9/ See Bell of Pennsylvania, id, where the Court of Appeals (3rd Circuit) determined that the existence of such "factual" issues did not trigger a requirement for an evidentiary hearing.

RCA Globcom has claimed that it will suffer irreparable injury if a stay is not granted. This claim is based on the prospect of its receiving a lesser proportion of unrouted traffic, at least initially, under the revised formula than it receives under the existing formula. While there is no denying that RCA Globcom will receive a lower percentage of unrouted traffic under the revised formula than it receives today, there exists a serious question as to whether this meets the irreparable injury test requisite to the issuance of a stay. As recognized in both Virginia Petroleum (Supra), and the Commission's recently decided Request For Stay Of Fee Schedule [10], the mere occurence of some loss of revenue as a result of a stay not issuing does not, of itself, constitute irreparable injury. Indeed, in Fee Schedule the Commission suggested that such a loss must at least be significantly burdensome to the petitioner for there to be irreparable injury. It is hard to conclude that RCA Globcom's potential loss for the relatively short duration of its appeal can be considered significantly burdensome in the context of that carrier's overall revenues.

Moreover, the other side of the coin must be considered. ITT Worldcom and other carriers have for decades [11] been deprived of a fair, just, and reasonable share of unrouted traffic, by this unlawful formula.

10/ 52FCC 2d 224 (1975).

11/ ITT Worldcom's complaint against the existing formula was filed over ten years ago.

During that same time, RCA Globcom has enjoyed the largesse of a disproportionate share of that unrouted traffic, which, on a cumulative basis, far exceeds any potential loss which that carrier could suffer during the pendency of its appeal. Thus, while denial of a stay will not harm RCA Globcom, issuance of such a stay will further perpetuate the long-standing inequity of this formula against ITT Worldcom and other carriers in a similar position. Moreover, the potential revenue loss of ITT Worldcom from the issuance of a stay is just as real as RCA Globcom's potential loss from its denial. In these circumstances, and with the existing formula having been found clearly unlawful, ITT Worldcom submits that equitable considerations weigh heavily on the side of denial of the requested stay.

RCA Globcom has also argued that a stay would be in the public interest on the grounds that implementation of the interim formula would cause costly changes in carrier facilities and increased marketing and advertising costs, all of which would allegedly have to be ultimately bourne by the public. As to facilities costs, ITT Worldcom can state that, even with an expected increase in traffic from the revised formula, it does not expect any significant additions or changes to its physical plant to be required. And, it is simply inconceivable that RCA Globcom, which expects to lose traffic, will find any increased plant expenditures required. As to RCA Globcom's alleged substantial increase in advertising and marketing costs, we have already shown that such would not appear to be an economically

prudent course. And, while we can only conjecture as to RCA Globcom's ultimate decision in this respect, we can state that ITT Worldcom does not anticipate any significant increase in its own marketing and advertising costs. Finally, it should be noted that, as an economic fact of life in a competitive environment, rates to the public for any service are always set at the level of the lowest priced competitor. ITT Worldcom certainly does not anticipate any increase in its overseas message rates as a result of implementation of the revised formula.

Conclusion

As ITT Worldcom has shown hereinbefore, RCA Globcom has shown no basis for its requested stay of the Commission's Formula Order. Far from showing a strong likelihood of prevailing on the merits of its appeal, RCA Globcom has not even shown a marginal likelihood of such success. The Commission's decision is sound, well reasoned, and clearly supported by the record. Nor has RCA Globcom shown irreparable injury from a denial of a stay. Indeed, when viewed in the context of the history of the existing formula, the injury to ITT Worldcom and other similarly situated carriers, which would result from the issuance of a stay, far out-weighs any injury

to RCA Globcom from its denial. Finally, RCA Globcom had failed to show that a stay would further the public interest. Therefore, the Commission is respectfully requested to dismiss or deny, as appropriate, RCA Globcom's Petition to Stay.

Respectfully submitted

ITT World Communications Inc.

By: John A. Ligon
Its Attorney

Dated: February 23, 1976

CERTIFICATE OF SERVICE

I, Shawn Eames, hereby certify that on this 23rd day of February, 1976, I mailed a copy of the foregoing "Opposition to Petition to Stay" by United States Mail, postage prepaid, to the following persons:

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Shawn Eames

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act	)	Docket No. 19660 RM-690

TO: THE COMMISSION

OPPOSITION TO PETITION FOR STAY

TRT Telecommunications Corporation (TRT) hereby submits its opposition to the Petition For Stay filed by RCA Global Communications, Inc. (RCA) on February 11, 1976, with respect to the Commission's Report and Order and Notice of Proposed Rulemaking, released January 7, 1976 ("the Decision"). In support hereof, TRT respectfully states as follows:

On January 7, 1976, after a very lengthy proceeding in which all interested parties were given the opportunity to present their views and to challenge the views of other parties, the Commission issued a well-reasoned and well-documented Decision in which it concluded "that the present method of distribution embodied in the international formula is unjust, unreasonable, inequitable and not in the public interest; and that the formula should therefore be replaced ..." (Decision, para. 3).

The Commission further held that:

> "... the record before us as well as elementary logic clearly warrants the conclusion that both the individual carriers and the public have been harmed by the formula's denying a carrier unrouted traffic. The carriers so affected have seen their marketing efforts

> essentially nullified by the balancing provisions -- ironically, the more successful those efforts have been, the more the carrier has been penalized. The formula's arbitrary disregard of the public's role has thwarted its expectations and may have resulted in an improper allocation of resources. Accordingly, we have concluded that those who have been injured are entitled to relief. (Emphasis added; Decision, para. 43).

RCA's Petition For Stay is a patent attempt on its part to delay relief to the public and the other carriers, to which the Commission has found they are entitled, in order that it may continue to enjoy the inequitable advantages accruing to it for an indefinite future period pending its appeal. Accordingly, we respectfully submit that RCA's petition should be denied.

RCA relies heavily on the fact that the formula revisions which are scheduled to become effective in March have been described as "interim". Thus, RCA argues that it is impractical to effectuate an "interim" formula while its appeal is pending. RCA's argument might have some plausibility if the Commission had contemplated that the "interim" formula would be operative only for a matter of a few months. However, on the contrary, it is clear that the Commission contemplates that the "interim" formula will govern the distribution of unrouted messages for a substantial period of time. Although the Commission believes that it should proceed in the direction of required customer routing of messages, it recognizes that it might not be practical to implement this proposal in the immediate future. In this regard, it noted in its Decision that at present a large number of customers either do not care to route their messages or are not familiar with the different

international record carriers (IRC's) and that until there is greater awareness on the part of the public of the competitive alternatives available to them, substantial problems would be incurred in implementing required customer selection in place of a quota system. The Commission's Decision, therefore, contemplates that during the period in which the interim formula is operative the IRC's will make their solicitation efforts more effective in informing the public as to the alternative IRC routings. Obviously, the Commission does not contemplate that the IRC's will be able to make substantial inroads into the large unrouted message market in a matter of a few months. This is further illustrated by Paragraph V of the interim formula which calls for a recalculation of quotas every six months.

Although RCA cites Virginia Petroleum Jobbers Association v FPC, 259 F2d 291 (DC Cir. 1958) as setting forth the circumstances in which the issuance of a stay is warranted, it has completely failed to make the showing required by that case. In this regard, we submit that RCA's chances of success on appeal are, to say the least, extremely remote. RCA has not shown irreparable injury, but only that absent a stay it will no longer be able to continue its present inequitable preferred position under the formula. Moreover, a grant of a stay would be contrary to the public interest and would clearly and directly result in irreparable injury to TRT and other carriers which are unjustly denied unrouted traffic under the present inequitable formula.

Likelihood of Success on Appeal

RCA's burden on appeal is heavy indeed. It must persuade the Court to overrule a well-reasoned and well-documented

Decision of the Commission on a highly technical subject which is clearly within the Commission's expertise and authority. Moreover, the Commission's Decision in this case is clearly correct. Thus, for RCA to prevail on appeal, it must somehow persuade the Court that the Commission abused its discretion by finding:

- That the present formula provisions, which are structured to maintain the relative 1942 market shares of the carriers, are unreasonable under current circumstances;

- That the present formula, which results in the great preponderance of unrouted traffic being transferred to only two of the IRC's without relation to their share of routed traffic, is inequitable;

- That in the competitive international record carriage industry, the division of the market should be determined by customer choice and the competitive efforts of the carriers rather than by an arbitrary formula based on circumstances prevailing in 1942;

- That there was no need to conduct trial-type evidentiary hearings in a rule making proceeding such as this in which no material facts are in dispute.

The Court of Appeals should have little difficulty in sustaining the Commission's basic findings and conclusion in this case, and accordingly, there is very little likelihood that RCA could prevail on the merits of its appeal.

Irreparable Injury

RCA claims that it will sustain an annual revenue loss of approximately $428,000 for outbound traffic and an annual revenue loss of $1,600,000 for inbound traffic as a result of a redistribution of traffic under the revised formula. However, the Commission has found that such traffic which RCA will lose under the new formula had been inequitably transferred to it under the old formula and should accrue to other carriers. Moreover, a grant of the stay requested by RCA would result in the irreparable loss by other carriers, now inequitably disadvantaged under the present formula, of the traffic and revenues to which the Commission has found they are entitled.

RCA's other claims of irreparable injury, i.e., an unquantified loss because of the uncertainty of the duration of the interim formula and additional marketing expenses, also should not be given any credence by the Commission. RCA does not specify what revisions in its operations and the operations of other carriers will be necessary under the interim formula. In this regard, we submit that no changes by the IRC's and only minor operating changes by Western Union would be necessary to accommodate the formula revisions prescribed by the Commission. Moreover, as discussed above, there is little question that the Commission's Decision will be sustained by the Court of Appeals and that the interim formula will remain in effect for a substantial period.

RCA did not set forth the basis of its estimate that its marketing expenses will be increased by $342,600 a year under the

new formula. In any event, RCA is under no compulsion by the Commission to spend any additional amounts for marketing. In this regard, TRT does not intend to increase its marketing budget as a result of the Commission's Decision. Rather, it will redirect its marketing efforts to place greater emphasis on the solicitation of public message traffic.

Effect on the Public Interest

Although the harmful effects on the public of a continuation of the present inequitable formula are difficult to quantify, they are, nevertheless, quite real and substantial. In this regard, the Commission held:

> "In this connection, however, we wish to note that we are not concerned here whether or not a party can quantify negative impact of the formula. ITT did not claim that the formula has led to an impairment of service quality. At most, it argued that the disincentive discouraged improvements in quality. This is precisely what concerns us about the present pattern of distribution. We cannot ignore the possibility that quality of service could have been improved absent the inequities of the formula. In any event, by placing distribution of traffic on a rational and competitive basis, we can minimize this danger and maximize the possibility of future benefits. For this reason, we believe the distortions in distribution patterns in the present formula are injurious to the public interest and should be eliminated." (Decision, para. 24).

As the Commission found, although the drafters of the present formula contemplated that unrouted traffic to practically all overseas destinations would be divided among several carriers, because of internal inconsistencies, the formula soon became so imbalanced that to most destinations one carrier received all unrouted traffic. In recent years Western Union has taken advantage of this imbalanced situation and programmed its Middletown

computer switch to recognize these "exclusive" routes by automatically switching all traffic destined to such "exclusive" areas to the appropriate carrier without transversing its quota routing center at Minneapolis. Out of the 59,000 unrouted international cablegrams Western Union now receives each week, 26,000 are destined to "exclusive" areas and automatically routed by its Middletown computer. The remaining 33,000 messages are sent to Minneapolis where they are tallied and switched. Since the imbalances which resulted in "exclusive" routes have been removed under the revised formula, Western Union initially will no longer be able to automatically switch a portion of the unrouted messages received by it. Rather, all unrouted messages will have to be tallied and routed in Minneapolis. Western Union has estimated that its incremental cost of processing the additional 26,000 messages a week in Minneapolis will be approximately $150,000 per year. It also estimates that the processing in Minneapolis delays the transfer of messages to IRC's by approximately 20 minutes.

RCA argues that the additional cost and delay required by Minneapolis processing would be harmful to the public. In this regard, we will agree that cost and delays should be eliminated to the extent feasible and we have no doubt that Western Union and the IRC's will work to eliminate any unnecessary costs and delays. However, the very requirement of a distribution formula interjects a complicating factor in the message handling process which is bound to result in some additional cost and delays. If the elimination of handling costs and delays were the only criterion to be

considered, the most efficient formula would be one under which all traffic, both routed and unrouted, were transferred to only one carrier. However, other factors, such as equity among carriers, deference to customer choice and competitive incentives, must also be considered.

The additional costs and delays under the interim formula, we submit, are de minimis in the total context of the administration of an equitable formula in the public interest. One hundred and fifty thousand dollars per year represents only approximately five cents for each of the approximately 3,000,000 unrouted messages handled by Western Union annually and quite clearly will not affect the charges paid by the public for this service. A 20 minute delay is also inconsequential in the total context of public message handling and is no more than the delay now being incurred with respect to the majority of unrouted messages which already must transverse Western Union's Minneapolis routing center.

Moreover, it should be recognized that the implementation of the interim formula will encourage the IRC's to improve their efforts in soliciting routings from customers which now file unrouted traffic with Western Union. As unrouted traffic as a percentage of total traffic declines, the costs and delays inherent in the administration of any equitable formula will be reduced. Thus, in the longer run, delays and costs will be reduced by the prompt implementation of the interim formula, rather than by the retention of present inequitable and obsolete formula provisions.

Substantial Harm to Others

A grant of a stay would most clearly result in direct, substantial and irreparable harm to TRT and other carriers which are denied an equitable share of unrouted traffic under the existing formula. TRT estimates that a grant of a stay would deny it $250,000 in net retained revenues annually with respect to the loss of outbound international traffic alone. RCA cannot minimize the clear irreparable losses of the other carriers merely by stating that the other carriers have existed under the present inequitable formula for 30 years. It is, of course, true that TRT could survive the continuance of the present formula, just as the implementation of the newly prescribed formula would clearly not threaten RCA's continued operation. However, the Commission after a lengthy proceeding on the basis of a complete record now has found that the present formula is unjust, unreasonable, inequitable and not in the public interest and has prescribed a new formula to correct the infirmities and inequities which it has found to exist. Surely, RCA should no longer be permitted to retain its unjustly preferred position at the expense of the other carriers.

Significantly, RCA has not suggested any procedures, such as an accounting order, to protect the rights of the other carriers if it should be unsuccessful on appeal. Rather, it seeks an unconditional stay which would compeltely deny the rights of TRT and other parties to this proceeding. The position taken by RCA is no doubt a result of its understandable lack of confidence in its chances for success on appeal.

WHEREFORE, TRT respectfully submits that RCA's Petition For Stay should be denied.

Respectfully submitted,

TRT TELECOMMUNICATIONS CORPORATION

BY: Roderick A Mette

Roderick A. Mette
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February 23, 1976

CERTIFICATE OF SERVICE

I, Cynthia A. Martell, hereby certify that on this 23rd day of February, 1976, I mailed a copy of the foregoing document by United States mail, postage prepaid, to the following:

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Cynthia A. Martell

Cynthia A. Martell

February 23, 1976

Before the
Federal Communications Commission
Washington, D. C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed Under Section 222 of the Communications Act.	)	Docket No. 19660 RM-690

TO: The Commission

Partial Opposition

RCA Global Communications, Inc. (RCA Globcom) hereby opposes in part the "Petition for Reconsideration" filed by Western Union International, Inc. (WUI) on February 11, 1976. In its petition, WUI requests the Commission to take the following actions:

1. Revise the interim formula prescribed by the Commission in its Report and Order and Notice of Proposed Rulemaking (Order) released January 7, 1976 so that all unrouted international telegrams would be distributed

to the international carriers in proportion to only that routed traffic originating outside of the existing gateways;

2. Postpone the effective date of the interim formula until January 1, 1977 so as to permit an orderly, efficient and economical implementation of that formula, and

3. Clarify the definition of routed traffic in the Order so as to make clear that direct access traffic originating with the gateway customers of The Western Union Telegraph Company (Western Union) is counted as routed traffic for the purposes of the interim formula.

RCA Globcom will show that the change requested by WUI in item 1 above is antithetical to the increased competition which the Commission has sought to encourage with the interim formula,* is based on a claim of disadvantage which has not been proved or shown to be significantly different than suffered by other carriers, and in total constitutes only an attempt to secure for itself

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*RCA Globcom, of course, disagrees with the validity of the Commission's determinations on the present and interim formulas.

the most privately beneficial formula possible. With respect to item 2 above, if RCA Globcom's petition for stay referenced below is denied, we would support the WUI petition inasmuch as it recognizes that the immediate effects of the change in the formula proposed by the Commission will be especially acute and that equity among the carriers demands that the new formula be phased in. RCA Globcom likewise supports the clarification requested by WUI in item 3.

Background

On January 7, 1976, the Commission released its Order purporting to find unlawful the existing international formula governing the distribution of unrouted international telegrams. In its place, the Commission prescribed an interim formula which would give to an international carrier unrouted traffic in proportion to traffic routed via it whether the traffic originated on the Western Union system or the carrier's own system. The touchstone of the Commission's Order in at least prescribing the interim formula was that it would foster maximum competitive efforts among the international carriers for all telegram traffic

within the United States.

RCA Globcom filed a petition for stay pending judicial review with the Commission on February 11, 1976 asserting that the Order fails to satisfy the statutory requirements of the Communications Act and fails to support either the finding that the existing formula is unlawful or that the new formula should be prescribed. It also demonstrated that all of the conditions required before a stay would be granted had been met and that, accordingly, the effective date of the interim formula should be postponed until the completion of the judicial review. Thereafter, on February 13, 1976, RCA Globcom petitioned the United States Court of Appeals for the Second Circuit for review of the Order.

WUI's Proposed Exclusion Of International Carrier Originated Telegrams From The Definition Of Routed Traffic Should Be Rejected

The thrust of the WUI argument is that the Commission's decision on the international formula "failed to give appropriate recognition to the fact that the IRCs compete in two essentially different markets": (a) the gateway market where the international

carriers can serve customers directly, and (b) the hinterland market where most customers originate their international telegrams with The Western Union Telegraph Company (Western Union). WUI further states that these two markets are distinctly different both geographically and conceptually.

RCA Globcom submits that the WUI is attempting to create distinctions which have no place under the Commission's rationale used in prescribing the interim formula. In its decision, the Commission stated:

> We believe that the volumes (of unrouted traffic distributed) should be based on all routed traffic, wherever originating in the United States. This includes direct pickups, direct access, and routed WU transfers. This is the most likely way to achieve the goal of distributing unrouted traffic on the same basis as routed. Direct pickups are by definition specifically routed and represent a significant portion of overall traffic. Therefore, to ignore such traffic would be unrealistic and contrary to our overall policy herein. Paragraph 51.

The overall policy the Commission refers to is one which seeks to encourage the expansion of the carriers' solicitation efforts for all international traffic and thereby, supposedly, to increase competition among the carriers. The Commission directive in this respect was totally unrestricted and it appears clear that they

envision these increased competitive efforts to take place not only in the hinterland but also the gateway cities. Since the obvious intention, although we submit based on fallacious assumptions and without regard to the public interest, is to divide the unrouted traffic so as to give benefits to the "most successful competitor", it would be untenable to arbitrarily divide the total market in which the carriers would be competing.

WUI goes on to argue that the inclusion of direct pickup traffic in the base for distribution of the unrouted telegram pool would result in a significant and unjustified prejudice to it. It explains that since the creation of WUI, it has had the right under the formula to treat all traffic filed with Western Union in Manhattan south of 60th Street, and not otherwise routed, as being routed via WUI. It further says that since the 1963 divestment there has been a drastic erosion of the traffic received as a result of this formula provision because of the closure of many Western Union public telegraph offices, the retermination of ticlines that were used exclusively for telegram origination, and the removal of Western Union's telephone acceptance bureau to New Jersey.

The claim of prejudice to WUI is difficult to accept and even more difficult to accord any weight to since the change in the formula will have the most severe financial impact on RCA Globcom. We have as much right to claim that prejudice exists and that certainly the adverse economic impact should not be exacerbated. If WUI is prejudiced in any way now, it was of its own choosing. Since 1963, WUI has reaped a bonanza of "unrouted" telegrams as a result of the special provision in the formula. For that entire period, it did not have to support a costly public telegraph branch office system. In essence, for no effort, it received large quantities of traffic. It now complains, however, that the benefits from this special arrangement are less than in the past. WUI presents no traffic figures to support this contention and the few facts submitted are open to question. Thus, it states that the number of Western Union branch offices has shrunk from 85 to only 3. RCA Globcom has never had more than 20 branch offices in New York City. Recently, RCA Globcom had operated only 10 branch offices and had requested the Commission for authority to close all but 4 of these offices.*

*The Commission granted the RCA Globcom office closure application in part and required that one additional office remain open. It should be noted, however, that one of the 5 offices now operating is located at the United Nations and is provided more as a diplomatic courtesy than for the purpose of generating significant traffic volumes.

Likewise, RCA Globcom has no tielines dedicated to telegram use in New York City. Finally, with respect to the move of Western Union's telephone bureau, we are unclear as to the volumes of messages involved or that such a move affects WUI's rights under the formula.

WUI appears to contend that this competitive disadvantage will disappear after September 30, 1976 since after that date it is free supposedly to open its own offices in New York City for the acceptance and delivery of international telegrams. It should only be noted that the Commission has already determined that WUI is under no legal disability, either under the formula or its contract with Western Union, with respect to opening its own offices. If it feels disadvantaged, it should immediately open such offices in the event the interim formula becomes effective.

The Interim Formula Should Be Phased In If A Stay Is Not Issued

If RCA Globcom's petition for stay is not granted, it would support the proposal that the interim formula should be phased in rather than making the change in such an abrupt manner

as to cause severe economic harm to the affected carriers.* As noted, RCA Globcom will sustain an annual loss of approximately 412,000 United States originated telegrams equating to approximately $428,000. In addition, some 530,000 telegrams of foreign origin would also be lost causing an annual inbound revenue loss of $1,600,000. This traffic and revenue would be lost irretrievably and could not be recovered at some later time. It should also be recognized that RCA Globcom will not be able to immediately effectuate any substantial cost reductions to offset the revenue losses as all of the plant necessary to handle the traffic originating on the Western Union network is already in place.

We also agree with WUI that a postponement of the effective date of the interim formula would be justified on the basis that it would allow Western Union to computerize the distribution of unrouted traffic reducing substantially the annual recurring costs which are to be paid by the international carriers. Waiting until that time would also insure that the quality of service provided by Western Union would not deteriorate as is acknowledged if the distribution must be done manually at Minneapolis.

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*The continuation of such support is, of course, dependent upon the outcome of the judicial proceeding RCA Globcom has instituted to determine the validity of the Commission's formula decision.

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*The continuation of such support is, of course, dependent upon the outcome of the judicial proceeding RCA Globcom has instituted to determine the validity of the Commission's formula decision.

Conclusion

In view of the above, RCA Globcom requests the Commission to deny WUI's Petition for Reconsideration insofar as it requests a revision in the interim formula excluding routed traffic originating in the gateways from the base used for distributing the total unrouted traffic.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

s/ Francis J. DeRosa

s/ Carl J. Cangelosi

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February 26, 1976

CERTIFICATE OF SERVICE

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s/ Mary S. Ruedi

Before the
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Washington, D. C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operating in the Continental United States, Including Possible Revision to the Formula Prescribed under Section 222 of the Communications Act.	)	Docket No. 19660 RM-690

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

ITT World Communications Inc. (ITT Worldcom) hereby opposes the petition of Western Union International, Inc. (WUI) seeking reconsideration of the Commission's order prescribing a revised International Formula (Formula Order). 1/ Since WUI's petition fails to establish any error in the Commission's decision, it should be denied. WUI seeks to have the Formula Order revised in three major respects: (1) exclusion of IRC gateway pickups from the routed traffic totals used for distributing unrouted traffic; (2) postponement of the effective date of the revised Formula to January 1, 1977; and (3) clarification of the revised Formula so as to confirm that the Commission's existing regulations with respect

1/ Report and Order and Notice of Proposed Rulemaking, released January 7, 1976, Docket No. 19660, FCC 75 - 1430.

to overseas messages filed directly with an IRC by a Western Union Telegraph Co. (Western Union) subscriber locate in an IRC gateway are continued. The obvious purpose of the suggestions, which are separately discussed below, is to make the revised Formula more favorable to WUI's interests. Since the touch-stone of the Commission's Formula Order is the public interest, as distinguished from WUI's corporate interest, they should be denied.

WUI Has Provided No Basis For
Amendment Of The Routed Base
Of The Revised Formula

In its petition, WUI urges that the revised formula be amended so as to change the routed traffic base--on which unrouted traffic will be distributed proportionately--by eliminating from that base traffic picked up directly by the IRCs in their gateway cities. Stated differently, under WUI's proposal, unrouted outbound overseas message traffic would be distributed to the IRCs in direct proportion to the routed traffic received from hinterland users. The reason for WUI's requested change is readily apparent from the statistics in Table 2 of the Formula Order (p. 13). WUI enjoys a substantially higher proportion of hinterland routed traffic than the proportion it receives either from gateway pickups or on an overall basis. And, WUI's request represents littlemore than a blatant

effort to manipulate the revised formula so as to achieve a distribution most favorable to it. 2/

WUI's attempts to justify this parochial position are completely without merit. Its strained arguments as to differences between gateway pickups and hinterland routed traffic, based on the marketing postures or strategies of the IRCs or on alleged conceptual and/or geographic distinctions, are so transparent that rebuttal appears unnecessary. Similarly, WUI's claim of lack of notice is without foundation. Both ITT Worldcom and TRT Telecommunications Corporation (TRT) have, from the outset of this proceeding, advocated a revised unrouted traffic distribution in proportion to each carrier's share of routed traffic. And, while the focus of the comments filed herein may have been on using Western Union routed transfers as a basis for proportionate distribution of unrouted traffic, it is disingenuous of WUI to maintain that it did not consider the possibility of a revised formula based on proportional distribution and using all IRC routed traffic as a base. Moreover, to place WUI's argument in proper perspective, its comments throughout this proceeding have not concerned themselves with <u>any</u> detailed proposal for revising the existing Formula. Rather WUI's comments have consisted

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2/ Note also that WUI wishes to separate paid direct access traffic from other gateway pickups, placing it in the hinterland routed category, suggesting that WUI believes that it enjoys a higher proportion of this category of traffic as well.

largely of paeans of praise for the existing Formula and predictable arguments against any change. In fact, it is noteworthy that the existing formula, which WUI has praised so highly, does include gateway pickups in WUI's quotas.

Finally, the Commission specifically directed all of the IRCs, including WUI, to provide, for the record in this proceeding, statistics on their respective gateway pickups. In the context of this overall proceeding it is inconceivable that WUI would not have been aware that this traffic might be included in a traffic base for a revised Formula based on the proportional distribution of unrouted to routed traffic.

Even WUI's substantive argument for eliminating gateway pickups from the routed traffic base will not withstand serious scrutiny. WUI has argued that it operates at a competitive handicap in the gateways because of its exclusive arrangement with Western Union for the use of only the Western Union gateway public offices. It is hard to take seriously WUI's claim of competitive disadvantage from its special relationship with Western Union since it gets all unrouted traffic filed in those Western Union gateway offices; and this traffic is, by its nature, the occasional, probably unsophisticated user who is generally unaware that there are competing international record carriers.

WUI's plaint that Western Union has substantially reduced its number of gateway public offices resulting in a "drastic erosion" of traffic filed through those offices also has a hollow ring. The reduction in

Western Union's New York City public offices was the result of a "consolidation" of a number of previously existing offices into new offices providing much broader service coverage than in the former individual offices, and this "consolidation" was approved by the Commission as serving the public interest.[3/] Moreover, ITT Worldcom and RCA Global Communications, Inc. (RCA Globcom) have undertaken similar consolidations of their own gateway public offices. And, a shrinking volume of traffic at public offices is certainly not unique to Western Union. This is a phenomena which has affected all carriers with the continuing advances in the ease of filing messages from remote locations by various electronic means.

The WUI argument of a gateway disadvantage also suffers from a serious conceptual fallacy. The gateway public offices, to which WUI ascribes a competitive "disadvantage" account for only a very small fraction of that carrier's, or of any carrier's, total gateway pickups. Based on the summaries of the 13-week Western Union traffic study prepared by the International Quota Bureau (IQB), the total number of unrouted messages filed through Western Union's public offices (and thus, considered directly filed with WUI) during that period was 8,098. Looking at Table 1 of the Formula Order (p. 12), it can be seen that the total "Direct Pickups" reported by WUI for the period comparable to the Western Union study was 276,554. Thus, the WUI public office pickups,

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3/ See The Western Union Telegraph Co., Consolidation of 22 Public Telegraph Offices, 37 F.C.C. 2d 813 (1972).

which account for only about 3 percent of that carrier's total gateway pickups, are completely over-whelmed by traffic from other modes of direct pickups, particularly traffic filed by WUI's own subscriber tielines. It should be noted that this minimal percentage of over-the-counter traffic as compared to overall gateway pickups is also consistent with ITT Worldcom's gateway traffic pickup experiences. 4/

Indeed, if WUI really believed that it could significantly improve its share of gateway filed traffic by opening its own gateway offices, it would certainly have petitioned the Commission for relief from the "onerous" provision of the existing Formula. The alleged impediment of WUI's "agreement" with Western Union, which apparently did nothing more than formalize the terms of the Formula, in reality constitutes no such bar. The Commission has already determined that the continuance of this "agreement" would be contrary to the public interest. (Formula Order, para. 38, 39, 41).

4/ Although the statistics accompanying ITT Worldcom's Supplemental Comments in this matter showed a relatively large percentage for Message Pickup, a very substantial proportion of those pickups (approximately 80%) would not be comparable to over-the-counter operations in the context used herein. They were instead batch pickups on a regular basis by ITT Worldcom messengers from banks and other financial institutions. If WUI receives this type traffic it certainly would send its own messengers to make the pickups rather than relying on Western Union to perform this function.

In fact, however, as the record herein will show, WUI has never made any suggestion that it be relieved of this "burden". In its "Reply" comments (dated August 16, 1974) WUI defended its use of the Western Union offices; in its "Supplemental" comments (dated August 1, 1975) WUI offered to give up its use of those Western Union gateway offices as a concession to the acceptance by other parties and the Commission of a compromise proposal by WUI for concluding the Formula proceeding; and, finally, in its Petition for Reconsideration here, needing a scape-goat to rationalize lower than desired proportions of gateway filed traffic, WUI offered up the exclusive Western Union public office arrangement as the alleged culprit.

From the foregoing, it should be clear that WUI suffers no competitive handicap from its arrangement with Western Union for gateway public office pickups. The relatively sharp differential between WUI's proportionate share of hinterland routed traffic and gateway pickups, an anomaly unique to that carrier, should more realistically be recognized as an undue advantage enjoyed by WUI for hinterland routed traffic. Indeed, these statistics largely confirm ITT Worldcom's long held thesis that the name similarity between WUI and Western Union is confusing to the occasional user, with the result that some traffic which would have otherwise been filed unrouted is actually marked by the sender for routing via WUI. And, while the Commission may be unable to eliminate the competitive advantage derived by WUI from this name similarity, it certainly

should not acerbate this advantage by removing from the formula data base other traffic which tends to moderate the effect of that bias.

In the final analysis, ITT Worldcom submits that the Commission's choice of all routed traffic for the formula data base was eminently sound and logical; that the inclusion of gateway pickups in the data base increases the size of that data base more than five-fold, which, of itself, will tend to eliminate the effects of any anomalies in the distribution; and that WUI has not made any credible showing of prejudice to it from the use of an all routed traffic data base.

WUI's Plea For a Deferral Of The Formula Effective Date Is Completely Lacking In Merit

The argument of WUI for a deferral of the effective date of the revised formula is nothing more than a plea that it be permitted to enjoy the benefits (to WUI) of the existing Formula for just a little bit longer. ITT Worldcom has waited more than eleven years for the Commission to act on its complaint respecting the existing Formula. And, while it can appreciate WUI's desire to delay the "moment of truth" as long as possible, ITT Worldcom submits that, having found the existing Formula to be unlawful, it is incumbent upon the Commission to implement its decision prescribing a revised Formula as quickly as possible.

WUI has shown no reason why the revised Formula cannot be implemented pursuant to the Commission's timetable. With the short extension to March 21, requested by Western Union and agreed to by all parties, Western Union represents that it will be prepared to begin distribution of unrouted traffic pursuant to the revised Formula. At a meeting of the International Formula Committee (IFC) on February 18, 1976, agreement was reached as to all significant administrative details relative to the formulation of specific quotas by the IQB.

The argument of WUI that implementation of the new Formula will cause "disruptions" in the international record industry is specious. ITT Worldcom will not require any significan change in its facilities or procedures to handle an anticipated increase in message traffic under the revised Formula. It is inconceivable that WUI, which expects to lose traffic, will have any requirement for changed facilities. But even if some adjustments were found necessary, WUI has been on notice for over ten years that a revision in the international Formula, at least generally along the lines of the revisions prescribed by the Commission, would be forthcoming. To now argue surprise and the need for an additional nine months to get ready for those revisions stretches credulity to the breaking point.

WUI's argument that deferral of the effective date would permit Western Union to program the Formula into its computer and thereby avoid nine months of charges for a manual distribution of the Formula traffic is similarly lacking in merit. In the first place Western Union has not yet determined either the time required or the costs involved in automating the distribution under the revised Formula. It may well be that upon obtaining this information, the costs or required time interval may make such an effort unwise for the duration of this interim Formula. Indeed, Western Union itself has suggested going forward

on a manual basis while it studies further the possibility of a computerized distribution. With respect to the costs for the manual distribution, ITT Worldcom must point out that they are only Western Union estimates, subject to review and analysis as to reasonableness by both the IRCs and the Commission. The estimated "start-up" costs for performing the manual distribution are a relatively nominal $12,000, and the Commission has provided for an equitable allocation of those costs among the participating IRCs.

WUI's allegations as to competitive disadvantage in the gateway cities due to its alleged in abili[illegible] to open its own gateway public office, at least prior to October 1. 1976 , has been addressed in the previous section herein, and, as well, by the Commission in the Formula Order.

ITT Worldcom also suggests that the Commission cannot, consistent with its statutory duty under Section 222 of the Communications Act, defer the effective date of the revised Formula. It has found the existing Formula unlawful and Section 222 therefore requires that it prescribe a lawful Formula. There having been no meritorious reasons shown for any substantial deferral of the effectiveness of the revised Formula, we submit that the Commission is obligated to promptly terminate use of the existing unlawful Formula, and thus, to require the prompt implementation of the revised Formula.

Finally, ITT Worldcom would point out that this request is fundamentally a motion for a stay of the Commission's Formula Order. Therefore, the Commission is required to deny the request, pursuant to Section 1.44(e) of the Commission's Rules and Regulations because it was not filed as a separate pleading as required by that rule.

In sum, ITT Worldcom submits that WUI's self-interest in preserving its existing disproportionate share of unrouted message traffic for some further period of time clearly does not constitute good cause for the deferral which it seeks here. The Commission should therefore deny this WUI request.

With respect to WUI's request for clarification of the Formula Order, as not effecting any change in the established practice for gateway "direct access" filings, ITT Worldcom submits that no such clarification is required. The practice of absorption by the IRCs of the transmission costs of Western Union subscribers located in the gateways who directly file message traffic with the IRCs has existed for a very long time and is incorporated in the tariffs of the IRCs. The Formula Order did not in any way address this practice. Therefore, it would be completely unreasonable to construe the revised Formula prescribed by that order as requiring any change in this long standing practice.

Therefore, for the reasons set forth hereinbefore, ITT Worldcom respectfully requests that the Commission deny the WUI Petition for Reconsideration of the Formula Order.

Respectfully submitted,

ITT World Communications Inc.

By: Joseph J. Jacobs /JK
Joseph J. Jacobs

John A. Ligon
John A. Ligon

Its Attorneys
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Dated: February 27, 1976

CERTIFICATE OF SERVICE

I, Shawn Eames, hereby certify that on this 27th day of February, 1976, I effected service of a copy of the foregoing "Opposition to Petition for Reconsideration on the following persons:

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Shawn Eames

Shawn Eames

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act	)	Docket No. 19660 RM-690

TO: THE COMMISSION

TRT TELECOMMUNICATIONS CORPORATION'S
OPPOSITION TO PETITION FOR RECONSIDERATION

TRT Telecommunications Corporation (TRT) hereby submits its opposition to the Petition for Reconsideration filed by Western Union International, Inc. (WUI) on February 11, 1976 with respect to the Commission's Report and Order and Notice of Proposed Rule-making (Decision), released January 7, 1976. In support hereof, TRT respectfully states as follows:

WUI requests the Commission to modify its Decision in three respects:

1. It requests that traffic picked up directly by international record carriers (IRC's) in their gateway cities be excluded from the "routed" traffic base that under the new formula prescribed by the Commission determines the proportion of unrouted traffic to be received by each IRC.

2. It requests the Commission to defer the implementation of the new formula for an additional 10 months until January 1, 1977.

3. It requests the Commission to modify Paragraph IV(b) of the new formula to clarify that the IRC's may absorb domestic Telex and TWX charges of customers located in the gateway cities which use those services to file international telegraph messages directly with the IRC's.

Use of Gateway Pickup Traffic

WUI contends that all traffic filed directly with the IRC's originated by customers in the gateway cities should be excluded from the formula base. It claims that this traffic should be excluded because it is not traffic handled by The Western Union Telegraph Company (Western Union) and should not affect a formula relating to the distribution of traffic filed with Western Union. Thus, it argues "Clearly WUTelCo can only distribute traffic which it has received from its own customers, and Section 222(e) relates to this traffic, not the traffic filed directly with the IRC's in their gateway offices" (WUI Petition, p. 3). However, WUI illogically contends that traffic which is directly filed with the IRC's by "hinterland" customers located outside of the gateway cities should be included in the "routed" base (WUI Petition, p. 8), although this traffic also is not handled or transferred by Western Union.

WUI claims that the "hinterland/WUTelCo market" and the "gateway/IRC market" are essentially different. However, we submit that the IRC's compete for message traffic on a nationwide basis both in the gateways and in the hinterland. In both the gateways and the hinterland the customer may choose to file his message with Western Union or directly with one of the IRC's. In both the hinterland and the gateways the customer has the option to route his message to a designated IRC or to file it unrouted.

We, of course, are very cognizant of the fact that all the IRC's are now not accorded an equal opportunity to compete for direct file traffic because of the present unequal gateway

authorizations of the various carriers. However, this inequitable situation will soon be remedied pursuant to the Commission's recent statement of policy in Docket No. 19660. Thus, although TRT previously argued in this proceeding that because of the inequitable gateway structure, all gateway traffic should be excluded from the formula base, with the present prospect of equal gateway authority, TRT is convinced that it can compete successfully and fairly with the other carriers on a nationwide basis. In this regard, it does not seek the aid of a gerrymandered formula, such as that sought by WUI.

WUI's argument that it was denied adequate notice that gateway direct file traffic might be included in the traffic distribution base under a revised formula to be prescribed by the Commission is quite clearly without merit. WUI was on notice from the inception of this long proceeding that the Commission was considering the revision of the international formula. Surely, the Commission was not required to adopt the proposals of any of the parties in toto.

The basis for the Commission's inclusion of direct file traffic in the formula routed base is adequately explained in its extensive and well-reasoned decision. It is beyond contradiction that direct pickups, as the Commission pointed out, "are by definition specifically routed" and are indicative of the customer's selection among the competing carriers.

WUI's argument that it will be prejudiced under the new prescribed formula is equally without merit. At most WUI has shown that, because of changes in Western Union's domestic operations,

it does not benefit as greatly as it once did from the preferential treatment accorded to it with respect to gateway city traffic. Although WUI complains that there are now only three WUI-designated Western Union offices in New York City, this is, of course, three offices more than TRT has in this very major traffic center. Moreover, WUI neglects to mention that it operates its own telephone acceptance bureau and has its own extensive tieline network in that city. Thus, WUI already has facilities of its own for the acceptance of message traffic which are substantially equivalent to the other New York-based IRC's. In this regard, it should be recognized that only a very small percentage of direct file traffic is filed over-the-counter at public offices.

Deferment of the New Formula

The Commission has held that:

> "... the record before us as well as elementary logic clearly warrants the conclusion that both the individual carriers and the public have been harmed by the formula's denying a carrier unrouted traffic. The carriers so affected have seen their marketing efforts essentially nullified by the balancing provisions -- ironically, the more successful those efforts have been, the more the carrier has been penalized. The formula's arbitrary disregard of the public's role has thwarted its expectations and may have resulted in an improper allocation of resources. Accordingly, we have concluded that those who have been injured are entitled to relief. (Emphasis added; Decision, para. 43).

WUI requests the Commission to deny the relief to the public and the other carriers to which it has found they are entitled for an additional ten months.

WUI argues that justice should be denied for an additional ten months because of need for the IRC's and Western Union

to effect operating changes and because WUI and others which have inequitably benefited under the old formula have relied on a continuation of their unjust benefits in making financial projections. WUI does not specify any operational changes which will be required of the IRC's under the new formula. We submit that no significant changes by the IRC's will be necessary to accommodate the formula revisions prescribed by the Commission. Although Western Union initially will be required to expand its Minneapolis quota center, Western Union states that all required changes in its operations will be completed by March 21, 1976, at which time it will be prepared to efficiently accommodate traffic under the revised formula. Since Western Union has been on notice of the formula revisions since December 22, 1975, we submit, there is no basis for WUI's characterization of Western Union's preparation for traffic under the revised formula as "hasty". Moreover, there is no basis to question Western Union's assurances that it will be able to implement adequately the new formula on March 21, 1976

In the light of the pendency of this proceeding, we strongly doubt that WUI has substantially relied on a continued receipt of a disproportionate share of unrouted traffic in its financial projections. However, if it did, this would only be a basis for questioning the prudence of WUI's management. Any unreasonable expectations which WUI may have had on this score are surely no basis to permit it to continue to enjoy its unjust formula preferences for an additional ten months.

Gateway Direct Access

WUI's final complaint with the Commission's Decision, relating to a clarification of Paragraph IV(b) of the revised formula, is in the nature of a nit-pick. Although we believe that the present language of Paragraph IV(b), especially when read in conjunction with Paragraph IV(a), is sufficiently clear that the requirement of the customer to pay all domestic communication charges is only applicable with respect to hinterland originated direct file traffic, we agree that clarifying language such as suggested by WUI would be beneficial. There is, of course, no reason to postpone implementation of the new formula pending such minor editorial revisions in its langugage.

Conclusion

As the Commission is aware, ITT's complaint and petition seeking revision of the formula, which initiated this proceeding, was filed more than ten years ago. After lengthy proceedings, in which all interested parties were given the opportunity to present their views and to challenge the views of other parties, the Commission issued a well-reasoned and well-documented Decision in which it concluded "that the present method of distribution embodied in the international formula is unjust, unreasonable, inequitable and not in the public interest, and that the formula should therefore be replaced ..." (Order, para. 3). In this regard, the Commission has formulated and prescribed an interim formula which corrects the major inequities and infirmities which are inherent in the present formula.

Accordingly, we submit that relief has already been delayed too long to the public and the carriers which are unjustly denied unrouted traffic under the present formula, and that the interim formula should be promptly implemented.

WHEREFORE, WUI's Petition For Reconsideration should be denied.

Respectfully submitted,

TRT TELECOMMUNICATIONS CORPORATION

BY: Roderick A. Mette

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February 27, 1976

CERTIFICATE OF SERVICE

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Cynthia A. Martell
Cynthia A. Martell

February 27, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act	)	Docket No. 19660 RM-690

To: The Commission

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Western Union International, Inc. (WUI) hereby replies to the Oppositions of TRT Telecommunications Corp. (TRT) and ITT World Communications, Inc. (ITT) and the Partial Opposition of RCA Global Communications, Inc. (RCA) to WUI's Petition for Reconsideration of the Commission's Report and Order and Notice of Proposed Rulemaking (Order) released January 7, 1976. In support of its reply, WUI respectfully states as follows:

Nature Of Routed Traffic Base

In its Petition, WUI requested the Commission to reconsider its Order and revise the interim formula by specifying that the base of routed traffic for distribution of unrouted traffic exclude all traffic filed directly with the IRCs by customers who do not use the facilities of The Western Union Telegraph Company (WUTelCo). WUI pointed out that the formula was designed to distribute traffic derived

solely from the market composed of patrons of WUTelCo. Consequently, it is far more logical, given the basic premise of the Commission that routed traffic should govern unrouted traffic*, that the routed traffic to be considered in allocating unrouted traffic should consist only of the traffic derived from the same class of customers as the unrouted traffic, specifically, that filed through the facilities of WUTelCo. WUI further pointed out that the Commission's adoption of formula changes of which the affected carriers had no notice or opportunity to comment constituted a violation of Sections 222(e)(1) and 222(e)(3) of the Communications Act of 1934 and Sections 553(b) and 553(c) of the Administrative Procedure Act. WUI also stated that since it has no offices of its own, and the public facilities of WUTelCo in New York have drastically declined in recent years, utilization of direct pickup traffic would place WUI at an unwarranted competitive advantage.

None of the three carriers opposing WUI's Petition has refuted WUI's basic contention that, if routed traffic is to be used as the basis of distribution of unrouted traffic, then logically the routed traffic to be used for

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* WUI does not accept this premise, and has requested the Commission to reconsider its adoption.

this purpose should be derived from the same market as the unrouted traffic. TRT attempts to gloss over the differences between the direct pickup market of the IRCs in the gateways and the hinterland/WUTelCo market consisting of patrons who utilize WUTelCo's facilities, by arguing that the IRC's compete for message traffic on a nation-wide basis. RCA merely states its contention that the goal of increased competition mandates that the routed traffic base should include all traffic, including traffic totally unrelated to the group of customers generating the unrouted traffic. ITT chooses not to offer any rebuttal of WUI's argument whatsoever except to characterize it as "parochial".*

The carriers opposing WUI's Petition have failed to take into account the fact that the communications opportunities available to customers in the gateways, and consequently the factors influencing their decision whether to file messages with the IRC's or with WUTelCo, are different from those in the hinterland. Customers in the hinterland generally have no practical choice but to use the facilities of WUTelCo to file their messages. In the gateways however, decisions as to routing are affected by the availability of RCA and ITT public offices, and as ITT points out, by the use

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* Presumably, ITT would have the Commission naively believe that its long and ardent efforts to have the formula changed are unrelated to the fact that its share of the unrouted pool would be substantially increased thereby.

of messengers to pick up traffic. Thus in the gateway the choice of carrier may be influenced by the sheer happenstance of the proximity of an office of one of the IRCs or by the routes of messengers picking up traffic, or by the extent of gateway advertising. In the hinterland, however, these factors are not applicable and the public has exactly equal access to all carriers, since all traffic uses WUTelCo's non-discriminatory facilities. Consequently, inclusion of traffic derived from the IRC's gateway facilities in the routed base would distort the proper distribution of unrouted traffic.*

ITT and TRT argue that WUI had legally sufficient notice that gateway pickup traffic would be included in the traffic base, notwithstanding the fact that neither the Commission nor any carrier ever proposed such action. Section 222(e)(3) of the Communications Act mandates a "full hearing" before any revision in the formula may be promulgated. It is indeed questionable whether the Commission has complied with the statutory mandate of a full hearing even for proposals of which WUI did have notice, since no evidentiary hearing was held despite the reiterated requests of WUI and RCA. Certainly WUI was

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* ITT's allegation that the WUTelCo office pickups constitute only 3% of WUI's "total gateway pickups" is inaccurate and misleading since it erroneously includes large numbers of messages derived from the hinterland and filed via direct access in the gateway pickup total.

denied the benefit of a "full hearing" when it did not know that the Commission was even considering the inclusion of direct pickup traffic. One practical example of the resulting detriment to WUI is the lack of industry-wide figures for direct pickup traffic. (The IRC's currently lump direct access traffic from WUTelCo patrons with gateway pickup traffic in the figures reported to the IQB). If WUI had been on notice that the Commission was considering the use of direct pickup traffic, it would have insisted that the WUTelCo study of international message traffic (which formed the statistical basis of the Commission's decision) provide separate figures for these two classes, so that it would have been possible to measure the effect on each carrier. Without this break-down, it is impossible to determine whether WUI or any other carrier would be helped or hurt by inclusion of such pickup traffic in the routed base.

In response to RCA's argument that the Commission's decision is based on a desire to increase compeition among all classes of traffic, it is sufficient to note that the courts have stated that competition alone is not an adequate factor to justify Commission action. (Hawaiian Telephone Company v. FCC, 498 F.2d 771 (D.C.Cir. 1974).

RCA argues that WUI is not prejudiced by the inclusion of direct pickup traffic despite the fact that it

has no public offices in any of its gateway cities, because under the current formula, unrouted messages filed with WUTelCo offices in Manhattan (south of 60th Street) are deemed routed via WUI.* This provision is not a "bonanza", as RCA terms it, since the full landline haul was paid to WUTelCo for each such message. RCA and ITT on the other hand "scoop" the landline haul for messages that they pick up. Additionally, RCA and ITT have been able to locate their public offices at will, near to the concentrations of international message filers, while WUTelCo chose the location and number of its offices with regard to the origin of domestic traffic. None of the carriers opposing WUI's Petition has refuted the fact that the erosion of WUTelCo's pickup facilities in Manhattan has significantly reduced the value of the right of use of WUTelCo offices, which was the quid pro quo for WUI's inability to open its own offices.** Finally the

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* The fact that ITT and RCA have reduced the number of their public offices is not persuasive, since RCA and ITT filed their applications to close offices long before they knew the Commission would use traffic filed in these offices to allocate unrouted traffic.

** ITT argues that WUI was never prohibited from opening up its own offices despite the existence of the Domestic Facilities Agreement (DFA) approved by the FCC. This is a very interesting argument. Does ITT contend that any carrier can ignore the terms of any agreement filed with and approved by the Commission? In any event, regardless of dicta in the Commission's Order, the DFA is still in effect.

public offices of RCA and ITT have familiarised the public with their names, while WUI has had no such public exposure.

The Effective Date Of The Formula Should Be Postponed

ITT and TRT (but not RCA) oppose WUI's request for reconsideration of the effective date specified by the Commission in its order. ITT urges that because this proceeding has been pending for some time, WUI should have anticipated that the Commission would order the international formula changed, despite the fact that the public is not affected in the slightest, and that the Commission would adopt amendments to the formula which were never proposed by any party or discussed in the pleadings. The absurdity of this is self-evident.

WUTelCo has stated that it will take approximately nine months to computerize the new formula. In the meantime, it proposes to expand its manual operation at Minneapolis by hastily hiring and training several new operators. The consequences of this unnecessary crash program, by WUTelCo's own statement, are additional expenses at the rate of $150-200,000 per year and significantly increased processing time for this traffic. It is likely that hastily trained operators will contribute to misrouting, format and other errors. None of this would be necessary if the Commission would allow WUTelCo sufficient time to computerise the formula operation.

ITT argues that WUI's request for reconsideration of the date on which the interim formula will be placed into effect contravenes Section 1.44(e) of the Commission's Rules and Regulations because only one pleading was filed. WUI does not believe that this Section applies where no appeal is being pursued; and no person was harmed by the filing of one document rather than two. In any event, the Commission waived any dual pleading requirement--if in fact there ever was one--by treating WUI's Petition for Reconsideration also as a petition for stay. See Commission Order of March 5, 1976 staying its January 7 Order at footnote 3 on Page 2 (FCC 76-192).

Gateway Direct Access

No carrier opposed the substance of WUI's request for a clarification of the Order to specify that customers in the gateways are not required to absorb the cost of telex, TWX or other media used to file messages with the IRCs. This is a technical change necessary to prevent any claim that the Commission's direct access policy was changed by this obvious inadvertence, and does not involve any substantive change in the Commission's decision herein. WUI submits that the grant of its request will assist the carriers and the public to be certain of the Commission's policy on gateway direct access.

WHEREFORE, the Commission should grant the relief requested in WUI's Petition for Reconsideration.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Roger P. Newell
Its Attorney

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Dated: March 8, 1976

CERTIFICATE OF SERVICE

I, Burnadine Diggs, do hereby certify that a copy of the foregoing pleading of Western Union International, Inc. has been sent by United States mail, postage prepaid, to the following:

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/s/ Burnadine Diggs

Dated: March 8, 1976

Before the
Federal Communications Commission
Washington, D. C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed Under Section 222 of the Communications Act.	)	Docket No. 19660 RM-690

TO: The Commission

COMMENTS

RCA Global Communications, Inc. (RCA Globcom) hereby provides its comments on the "Contingent Motion for Clarification" filed by The Western Union Telegraph Company (Western Union) on March 5, 1976. In its motion, Western Union requests the Commission to clarify its order, adopted February 26, 1976 and released March 5, 1976, granting a stay of the effective date of the interim formula prescribed in its Report and Order and Notice of Proposed Rulemaking (FCC 75-1430),* to make explicit that Western Union is

*The Commission stayed the effective date of the interim formula until such time as it has first issued a decision on the petition for reconsideration filed by Western Union International, Inc. and the petition for stay filed by RCA Globcom. If such decision is adverse to RCA Globcom, the Commission stated that it will permit it the opportunity to seek a stay from the reviewing court.

entitled to reimbursement for any increased expense incurred as a result of a continuation of the stay in implementing the interim formula beyond March 21, 1976.

RCA Globcom believes that Western Union is entitled to recover from the international carriers the legitimate expenses incurred by it in preparing to make the distribution under the interim formula. However, we would expect that in the event the effective date of that formula is extended beyond March 21, 1976, Western Union will take all possible steps to minimize the amount of these expenses.*

In addition to requesting clarification as to its right to reimbursement for the expenses just noted, Western Union also seeks a determination as to whether they will be recovered from all of the international carriers or only from those who have sought a postponement of the March 21, 1976 effective date. RCA Globcom submits that it is clear that all of the international carriers should share, in the manner specified in the Report and Order released January 7, 1976, any expenses legitmately incurred by Western Union. It would be totally inequitable for one carrier to have a financial penalty imposed on it merely because it sought the protections afforded by the Communications Act and other laws.

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*For example, it may be possible to temporarily assign some of the newly added personnel to other functions within Western Union.

In this respect, it should be emphasized that RCA Globcom has raised serious questions concerning the lawfulness of the Report and Order prescribing the interim formula. It has shown, among other things, that on appeal to the courts it is likely to prevail on the merits and that a grant of the stay will not harm the public while its denial will. In view of this showing, we believe that the Commission will issue a stay. However, in the event that our petition for stay is denied, the Commission has recognized that the public interest dictates that RCA Globcom should be given time to obtain a stay from the reviewing court. Given this recognition of the public interest in permitting the carriers to exercise, without penalty, their legal rights, the imposition of all of Western Union's expenses on less than all the carriers would be totally unfair and contrary to the basic intent of the Commission's order.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

Francis J. DeRosa

s/ Francis J. DeRosa

Carl J. Cangelosi

s/ Carl J. Cangelosi

Its Attorneys
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March 18, 1976

CERTIFICATE OF SERVICE

I, Mary S. Ruedi, hereby certify that on this 18th day of March, 1976, I mailed a copy of the foregoing document by United States mail, postage prepaid, to the following:

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Mary S. Ruedi

s/ Mary S. Ruedi

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act	)	Docket No. 19660 RM-690

TO: The Commission

TRT TELECOMMUNICATIONS CORPORATION'S
COMMENTS ON CONTINGENT MOTION FOR CLARIFICATION

TRT Telecommunications Corporation (TRT) hereby submits its comments on the "Contingent Motion For Clarification" filed herein on March 5, 1976 by The Western Union Telegraph Company (Western Union)

In order to be in a position to implement the new international formula prescribed by the Commission on a reasonably timely basis, Western Union has already incurred costs to modify and to expand its Minneapolis quota routing center and to hire and train seven additional employees. Western Union will be able to implement the new formula on March 21 and any postponement in this implementation date will require it to incur additional start-up costs. Accordingly, Western Union is understandably concerned that the Commission's February 26, 1976 order (FCC 76-192) staying indefinitely its Report and Order and Notice of Proposed Rulemaking, issued January 7, 1976 (FCC 75-1430) could result in it incurring additional cost to implement the formula for which it might not be reimbursed.

Western Union states, "Manifestly, any stay beyond March 21 would result in increased and, in a sense, unnecessary start-up costs for Western Union." In this regard, TRT agrees that it would be unreasonable to require Western Union to absorb such unnecessary start-up costs which would result from a continuance of the stay beyond March 21. However, it would be equally unreasonable to require the IRC's to absorb such additional and unnecessary costs. We respectfully submit that the Commission should vacate its stay effective March 21 so as to obviate the need for any party to incur these unnecessary costs.

In its February 26 order the Commission stayed its January 7 Report and Order, on its own motion, apparently in order to maintain the status quo pending consideration of the petitions of RCA Global Communications, Inc. (RCA) and Western Union International, Inc. (WUI). However, as Western Union's instant Motion makes clear, the issuance of a stay will not accomplish this purpose. Since the start-up costs required to implement the new formula have already been largely incurred by Western Union, the continuance of the stay beyond March 21 will not maintain the status quo but will result in the incurrence of additional and unnecessary start-up costs. Moreover, we respectfully submit that a continuance of the stay would unreasonably deprive the public and the carriers which are unjustly denied unrouted traffic under the present formula of the relief to which the Commission has found they are entitled.

In footnote 4 of its February 26 order, the Commission has indicated that it hopes to resolve the matters raised in the RCA and WUI petitions before March 21. We urge the Commission to make every effort to do so. However. even if the Commission should be unable to fully dispose of all matters by that date, we urge the Commission to vacate its stay in order to avoid the incurrence of additional and unnecessary start-up costs as well as to prevent irreparable injury to TRT and other carriers which are being denied a just and reasonable distribution of unrouted traffic.

Respectfully submitted

TRT TELECOMMUNICATIONS CORPORATION

BY: _____

Roderick A. Mette
Vice President & Counsel

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March 12, 1976

CERTIFICATE OF SERVICE

I, Cynthia A. Martell, do hereby certify that a copy of the foregoing has been sent this 12th day of March, 1976 to the following by United States mail, postage prepaid:

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Cynthia A. Martell

Cynthia A. Martell

March 12, 1976

Before the
Federal Communications Commission
Washington, D. C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed Under Section 222 of the Communications Act.	)	Docket No. 19660 RM-690

TO: The Commission

COMMENTS

RCA Global Communications, Inc. (RCA Globcom) hereby submits its comments on the proposal set forth in the Commission's Report and Order and Notice of Proposed Rulemaking, FCC 75-1430, (Order) which would require all international telegrams originating on The Western Union Telegraph Company (Western Union) system to be routed by the sender. For the reasons explained below, RCA Globcom believes that this proposal would be contrary to the public interest in that it would (a) by the force of the laws of economics, lead inevitably to the expenditure by the international carriers of additional millions of dollars on sales efforts which can only

adversely affect the ratepaying public, and (b) be prejudicial to certain of the international carriers because of the customer confusion with respect to the separation of the organizations bearing the Western Union name, i.e. many users believe that Western Union and Western Union International are the same company.

RCA Globcom submits that the all-routed proposal should not be prescribed. In any case, such proposal cannot and should not be prescribed before a valid market study is performed, under the aegis of the Commission, to determine, among other things, the extent of confusion noted above and the probable cost of eliminating that confusion through education of the occasional and one-time users.

Background

On December 22, 1975, the Commission adopted its Order finding that the present formula, under which the distribution of international telegram traffic originating on the Western Union system is made, is unlawful and repealed that formula effective March 1, 1976.* As a replacement, the Commission stated that it

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*RCA Globcom has petitioned the United States Court of Appeals for the Second Circuit for review of the Order and requested the Commission to stay its effectiveness pending such review. On February 26, 1976, FCC 76-192, the Commission stayed the effectiveness of the Order, on its own motion, until after, among other things, it had ruled on RCA Globcom's petition for stay and, if that petition were denied, we had been given an opportunity to seek a stay from the reviewing court.

believed in principle that all customers should be required to specify a routing for their telegrams, but that it did not have an adequate record before it to adopt the all-routed proposal at that time. As a result, it adopted for an interim period a formula which would distribute the unrouted traffic originating on the Western Union system to the international carriers in proportion to the number of routed telegrams, both from Western Union and originating on the carriers' own facilities, and at the same time directed the interested carriers to file comments on the legal, economic or other issues raised by the all-routed proposal.

An All-Routed Formula Would Be Contrary To The Public Interest

The Commission assumed in the Order, without a factual record, that the public interest would be best served by a formula in which customers are required to designate an international carrier to carry all telegrams. The Commission further recognized that in order to make this method of distribution feasible, the international carriers would have to advertise in such a manner as to reach the users of the service. We submit it is clear that

the proposed formula would be contrary to the public interest in that it would require the international carriers to spend many millions of dollars in an attempt to reach the occasional and one-time users of international telegram service who because of the very limited nature of their use of the service do not care which international entity carries the telegram overseas.

As noted in the Order, approximately 3 million telegrams or some 35 percent of all outbound international telegram traffic was unrouted in 1974. It is RCA Globcom's belief, based upon its many years of experience in the telegram field, that these unrouted telegrams are sent for the most part by people who use the service only once or twice a year for social purposes such as notifying relatives of births, deaths and other sporadic events such as arrival dates of travelers. Furthermore, it would appear that these occasional users are spread geographically throughout the United States. The combination of these two facts makes an advertising campaign directed at soliciting their business extremely costly and probably impractical and, as discussed below, even if successful, will leave the customer with no better service* than obtained today but at an

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*The Commission should realize, as it apparently has not, that after the initial acceptance of a telegram is performed by Western Union, the transfer of the telegram to the international carriers is made on a computerized basis and, therefore, automatic. This means that telegrams are transmitted overseas at virtually the same moment they leave the Western Union system.

undoubtedly higher cost.

If RCA Globcom is correct in its assessment that the senders of unrouted telegrams can be described as above, then any advertising effort would have to reach all segments of the public and involve an attempt to reach every part of the country. It would not be possible, for example, to limit the campaign to periodicals of relatively narrow scope, such as trade publications. Instead, advertisements in local newspapers throughout the country, magazines of nationwide circulation such as Time or Newsweek, and possibly even television would be required.

The cost to the carriers of this type of carrier identification effort would be extremely high. The characteristic of this market is such that continual repetition and reinforcement would be necessary. Certainly, an advertisement appearing this month would neither be read nor remembered by the average individual who, today, has no need to send an international telegram but has a need to send one six months from now.

In assessing whether the public interest would be served by an all-routed formula, the tremendous costs of the solicitation program just described would have to be compared with the complete

lack of benefits to be derived by the public. In the present case, the expenditures of money for identification advertising will not bring a single benefit to the user--rather it is inevitable that the increased costs to the carriers will eventually necessitate rate increases.

RCA Globcom demonstrated in its comments filed July 8, 1974 that the international telegram market has shown a complete absence of growth over the period 1963 to 1973 and that for the future, only decreases in the volume of telegrams could be expected. Similarly, inflationary factors and the recent increase in landline divisions paid to Western Union have eliminated the possibility of any rate decreases.* It is significant that during the many comments filed by the carriers on the formula question at no time has either of these two basic facts, i.e. declining market and no possibility of rate decreases, been disputed.

Given these facts, positive support on the record for the abstract proposition that there will be public benefit must be shown by the Commission before it can adopt the proposal. We submit that no such specific benefit has been shown and none can exist. The

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*The division of revenues paid to Western Union for the domestic handling of international messages has recently been increased by almost 50 percent.

extensive solicitation efforts which even the Commission envisions will occur if the all-routed formula proposal is adopted will only add greatly to the costs of a service now only marginally profitable.

If the solicitation efforts were successful, the only change would be that the occasional users of the service would be aware of the existence of the international carriers. Yet that knowledge would not bring with it any benefits. One cannot expect that international telegram rates will be reduced. With respect to service, there has been no claim by any carrier that an increase in volume will allow it to provide a better service to the public. Further, while RCA Globcom believes it provides service as good as the best, we do not suppose that the difference in quality could be perceived by a customer who sends one or two telegrams per year. Rather, such a customer has little opportunity to compare the relative qualities of service of the different carriers because of the infrequency of his requirements. Thus, the additional "knowledge" of the customer would not yield any demonstrable benefits.

We submit that the above clearly shows that the all-routed proposal is another step taken by the Commission towards unbridled competition which when analyzed in the context of the international

telegram service makes little economic, legal, or regulatory sense. The failure of the Commission to consider the specific characteristics of this market and instead rely on the theoretical benefits of competition in a theoretical industry as applied to a theoretical service cannot suffice to meet the requirement imposed upon the Commission to use the public interest as its guideline rather than competition for the sake of competition. Such an approach would clearly violate the holding in Hawaiian Tel. Co. v. FCC, 498 F. 2d, 771, and similar cases.

The All-Routed Proposal Would
Give An Unjustified Advantage
To Western Union International

In its supplemental comments filed August 1, 1975, RCA Globcom explained that it has routinely and repeatedly experienced a condition in the United States communications marketplace of customer confusion with respect to the separation of the organizations bearing the Western Union name, i.e. many customers believe that Western Union International and Western Union are the same company.*

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*RCA Globcom requests that that portion of the supplemental comments referred to be incorporated by reference rather than repeating them in their entirety here.

Support for our belief in this respect was provided by a market survey undertaken in January 1973 by Palshaw Measurement, Inc. of Southport, Connecticut. This survey was conducted among 1,031 telex operators and communications managers in the gateway cities and in 18 nongateway cities in order to test the respondents' awareness and attitudes toward three leading international telex carriers. The study results showed that 40 percent of the respondents who said that "Western Union" was the carrier they used did not know whether it was the domestic or international carrier and 4 percent felt that it meant only the domestic carrier notwithstanding that the original question addressed itself to international carriers only. When it is considered that this survey was directed at telex operators who could be expected to be more knowledgable about communications matters than the sender of an occasional international telegram, it can be seen that such confusion is undoubtedly widespread.

Additional evidence of this mistaken belief on the part of occasional users of international telegram service can be gathered from the abnormally high share of the traffic originating on Western Union's telex system which Western Union International receives.

Its substantial share of this market exists notwithstanding that it was not the first carrier to offer international telex, does not spend significantly more in advertising, does not offer a telex service with the largest number of overseas points served and secures a much smaller share of the gateway market where all of the carriers are directly represented. Rather, it can, in our opinion, only be explained by the fact that customers mistakenly believe Western Union and Western Union International are the same company. This confusion would bestow an additional and unjustified benefit on Western Union International, to the detriment of other carriers, if the all-routed proposal were prescribed. Thus, the occasional non-business user faced with the requirement to specify a carrier to carry his international telegram would likely specify Western Union International since to him Western Union means "telegram".

A Study Should Be Made Under
The Aegis Of The Commission To Determine
The Nature Of The Occasional User Market
And Quantify The Extent Of Prejudice

As has been explained above, most senders of unrouted telegrams only very infrequently send international messages and

if they were to be required to designate a carrier under the all-routed proposal they would pick Western Union International merely because of the similarity between its name and that of Western Union. This view is based upon the years of experience of RCA Globcom's marketing personnel as well as market studies such as the Palshaw Measurement, Inc. one already mentioned. We also believe that this evidence is convincing and that on the basis of it, the Commission should not prescribe the all-routed proposal.

However, in the event that the Commission is still disposed towards this type of plan, we submit that it should not proceed until it has established by means of a thorough study that what we believe to be the facts are not correct. The study, which would be performed under the aegis of the Commission at the carriers' expense, would be directed at determining at least the following:

(1) the exact nature of the market represented by those individuals who send unrouted messages;

(2) the frequency with which these users send international telegrams;

(3) the geographic distribution of such users;

(4) the bias, if any, which these users have for Western Union International because of its name;

(5) whether bias would be introduced by other factors if the all-routed proposal were put into effect;

(6) whether bias could be eliminated by any means if the all-routed proposal were put into effect, and the cost thereof; and

(7) whether the occasional users care as to which international carrier provides the service.

Answers to questions such as these, as well as others which would be developed, would provide the only basis on which the Commission could make a rational decision prescribing the all-routed proposal. Indeed, failure to get definitive answers in view of RCA Globcom's experience in this field as described above would undoubtedly constitute error and only result in an arbitrary and capricious decision. Also, as RCA Globcom has noted in prior pleadings, the Commission has a definitive obligation to avoid any confusion as to which carrier is actually handling an international telegram. Thus, in the Western Union Divestment Case, the Commission stated that "it would be inconsistent with our function as administrators of the act to permit circumstances to arise under which the public may be misled as to the carrier to which it entrusts its communications, particularly since this could operate to deprive

competing carriers of traffic they might otherwise receive."

30 F.C.C. 323, 344 (1961).

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

s/ Francis J. DeRosa

s/ Carl J. Cangelosi

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April 2, 1976

CERTIFICATE OF SERVICE

I, Mary S. Ruedi, hereby certify that on this 2nd day of April, 1976, I mailed a copy of the foregoing document by United States mail, postage prepaid, to the following:

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s/ Mary S. Ruedi

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, including possible revision to the Formula prescribed under Section 222 of the Communications Act.	)	Docket No. 19660
	)	RM-690
	)	
	)	
	)	

To: The Commission

COMMENTS

ITT World Communications Inc. (ITT Worldcom) hereby submits its comments in response to the Commission's Notice of Proposed Rule Making (Notice) regarding the long-term elimination of a formula, as such, for the distribution by The Western Union Telegraph Company (Western Union) of hinterland originated outbound unrouted telegraph message traffic among the interested international record carriers (IRCs), by requiring the sender to designate the IRC by which his message should be routed. 1/

1/ Report and Order and Notice Of Proposed Rulemaking, released January 7, 1976, Docket No. 19660, FCC 75-1430.

In its Notice, the Commission found that the public interest in the provision of international telegraph services would be best served by relying primarily on consumer choice for the distribution of outbound international messages among the several IRCs. After prescribing an "interim" Formula which would move in this direction by causing unrouted traffic to be distributed in proportion to customer-routed traffic, the Commission expressed the view that in the long-term all traffic should be specifically routed by the sender. The Commission recognized, however, that there were a number of unresolved operational and economic questions which could substantially impact the implementation of an all routed system. Accordingly, the Commission directed the interested parties to file comments addressing these unresolved matters.

ITT Worldcom agrees with the Commission's conceptual determination that an all-routed approach is the logical extension of the "interim" Formula for distribution by Western Union of hinterland originated telegraph message traffic.

However, as the Commission recognized, there is presently a substantial volume of unrouted traffic, such that an all-routed requirement could create a substantial burden for Western Union's employees who might have to explain the routing requirement and choice of carrier to a large proportion of those non-routing users, with a concomitant increase in Western Union's operating costs. For the reasons set forth hereafter, ITT Worldcom submits that the all-routed approach should be established as an ultimate objective toward which all parties would cooperatively strive.

ITT Worldcom submits that the Commission should adopt a flexible timetable toward reaching this goal, lest undue haste, required in order to meet an arbitrary deadline, result in compromises which diminish the quality of service to the public and/or impose a substantial cost burden on Western Union or the IRCs, which added costs will ultimately have to be included in the carriers' rate bases.

As the Commission noted, a large number (approximately three million in 1974) of hinterland originated international telegraph messages are not designated by the sender for routing via any particular IRC. Further, based on available information, experience, and judgment, ITT Worldcom is strongly of the view that a substantial part of the unrouted traffic pool is traffic of a social, or non-business nature, which traffic is characterized by irregular and usually infrequent message transmissions, on a per user basis.

In order to convert the approximately three million unrouted message originations into user-designated IRC routings, ITT Worldcom conceives of three possible approaches:

1. An extensive sales/advertising/promotion campaign on the part of the IRCs, and possibly Western Union as well, to acquaint present and prospective "unrouted" users with IRC identities and with the necessity and desirability of designating a particular IRC for the overseas carriage of a hinterland filed message;

2. A follow up notification procedure by each IRC to the senders of all unrouted traffic routed to that IRC by the Formula, stressing carrier identity and the desirability of designating a specific IRC for the routing of future overseas traffic;

3. An insistence by each Western Union receiving employee or agent that all overseas messages be designated by the sender for routing via a particular IRC, with appropriate explanation, as required, of the choice which the customer has among competing IRCs.

In ITT Worldcom's judgement, none of these three possible approaches offers a practical methodology for achieving an all-routed distribution in the near-term (i.e., the next one to three years).

An effective advertising/marketing campaign to achieve a "carrier consciousness" for the IRCs among the approximately three million unrouted message originators would be prohibitably expensive. As a class at least, those customers who do not designate an IRC for their hinterland originated overseas messages are widely scattered geographically and rather infrequent users of the overseas telegraph service (perhaps only once or twice in a lifetime). This would be particularly true for the "social" class of message users. In order to effectively reach these unrouted hinterland users, a massive nationwide IRC advertising campaign would have to be undertaken with a probable cost to each of the IRCs that would far exceed the

potential revenue from the "captured" unrouted traffic. Since these grossly uneconomic promotion expenses would ultimately have to be passed on to the ratepayers, such an effort would clearly not be in the public interest unless there were no reasonable alternative which would satisfy the criteria of Section 222 of the Communications Act of 1934, as amended. 2/

The use of a follow-up, or direct contact advertising campaign, based on unrouted originations which the Formula causes to be routed via a particular IRC, is also not likely to be effective. This class of users is believed to be characterized by highly infrequent message filings such that a one-shot IRC promotion, following the transmission by the IRC of an unrouted message, is quite likely to have been completely forgotten when (or even if) the user again has occasion, (some substantial time period later), to file another overseas message. This method also suffers from the disadvantage of requiring a very long period of time before it could reasonably be assumed that a substantial portion of the "universe" of unrouted users had been contacted, even assuming that this form of contact would be effective in establishing a "routing bias" among users who would otherwise file unrouted.

2/ Clearly, the "interim" Formula does satisfy the Section 222 criteria.

Requiring Western Union personnel interfacing with the sender to provide routing information and identification of the routing options (IRCs) available to the sender is similarly plagued with administrative and economic problems. ITT Worldcom would defer to Western Union as to the detail of administrative problems; however, if each of the Western Union customer interface personnel is required to know or have ready access to information as to the specific IRCs providing service to a particular point and must also explain to each customer the nature of the routing process, and the options available, a substantial amount of additional training will obviously be required for such personnel. The expense of this training, in addition to the decreased productivity due to the Western Union personnel making overseas routing explanation to customers [3/] would likely increase Western Union's overall operating costs by a substantial amount. (It is not inconceivable that these

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2/ For example, a telephone recording operator could easily become engaged in conversation with a customer for five minutes or longer explaining routing and enumerating all the IRCs. Conceivably, this could cut operator productivity in half. Estimating that WUD has approximately 1000 telephone recording operators and overall productivity is reduced by 20%, this could mean an additional 200 people would be required by Western Union and probably additional facilities such as WATS lines, FX lines and operator positions as well.

added costs, on a per message basis, would approach the average revenue for an unrouted message). Again, these added costs must ultimately be reflected in the rates charged for overseas message service.

The requirement that enforcement of an all-routed approach along with dispensation of appropriate routing information be done at the Western Union/hinterland-overseas customers interface suffers from another, equally serious flaw. Any mandatory routing requirement enforced by Western Union's agents virtually guarantees a substantial bias in those routings in favor of Western Union International, Inc. (WUI) because of the close similarity of names between those two carriers. Regardless of how the two carriers may feel as to their distinctions and differences, the generally unsophisticated, infrequently filing, unrouted user is not likely to appreciate what to him would be highly subtle legalistic distinctions. He is probably conditioned to the view that the words "telegram" and "Western Union" are basically synonymous. Thus, given a group of IRCs including WUI to choose between, he can be expected to choose WUI in at least a significant number of cases on the basis of familiarity of the "Western Union" name.

Although it may be possible to device an acceptable means of neutralizing this "Western Union" bias, at least to this point no one has suggested an effective method of doing so. ITT Worldcom submits that the Commission should not require the adoption of the all-routed approach until it has found an effective means to eliminate this highly probable bias in favor of WUI.

In its Notice, the Commission has expressed the belief that the IRCs have not effectively sought to reach unrouted users and stated its expectation that the IRCs would use the period of operation pursuant to the "interim" revised Formula to expand their solicitation efforts. Although, for the reasons heretofore set forth, ITT Worldcom is concerned that extensive further solicitation may be economically unfeasible, it agrees that the IRC's operations pursuant to the revised Formula will provide an excellent economic test of this concept. To the extent that such solicitations would be cost-effective, the revised Formula will provide adequate competitive incentive for the IRCs to seek to reach those presently unrouted users.

ITT Worldcom further submits that since the revised Formula provides a clearly equitable basis for distribution of the present unrouted traffic among the participating IRCs, it will be entirely

reasonable and prudent for the Commission and the parties to proceed with due deliberation in their respective efforts to achieve an all-routed distribution. The most important motivation for moving to an all-routed distribution appears to be a desire on the Commission's part to relieve Western Union of the administrative burden associated with the "interim" revised Formula. Obviously, this goal will not have been met if a hastily devised all-routed system results in a burden to Western Union equal to or greater than its burden under this "interim" Formula.

In conclusion, ITT Worldcom supports the Commission's determination that an all-routed approach should be the ultimate evolution of the Section 222 international formula. However, ITT Worldcom submits that there are substantial problems associated with reaching that goal which should be thoroughly explored by the Commission before ordering the implementation of an all-routed "Formula."

Respectfully submitted,

ITT World Communications Inc.

BY:

John A. Ligon

Its Attorney
67 Broad Street
New York, New York

Dated: April 2, 1976

CERTIFICATE OF SERVICE

I, Shawn Eames, hereby certify that on this 2nd day of April, 1976, I mailed a copy of the foregoing "Comments" by United States Mail, postage prepaid, to the following persons:

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Shawn Eames

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act	)	Docket No. 19660 RM-690

To: The Commission

COMMENTS OF WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) hereby submits its comments on the proposal of the Commission to require persons filing international cablegrams to specify the international record carrier (IRC) to handle such messages.

In its Report and Order and Notice released January 7, 1976, the Commission ordered that a revision be made to the international formula governing the distribution of unrouted messages filed with The Western Union Telegraph Company (WUTelCo). This revised formula was stated to be interim in nature, effective only until the promulgation of a final formula, which would require every filer of an outbound international message with WUTelCo to specify the IRC of his choice. The Commission requested comments on this proposal from the interested carriers. This submission is in response to the Commission's request.

As explained earlier in this proceeding, WUI disagrees with the interim formula for both substantive and procedural reasons previously specified, and WUI continues to believe that the public interest would best be served by retention of the existing formula, which has served well for many years.* However, if the Commission determines that it should change the present formula consistent with the procedural constraints of Docket No. 76-4054 before the U.S. Court of Appeals, Second Circuit, WUI believes that the public would be better served by the proposal for required routing than by the interim formula. Accordingly, WUI is submitting these comments without prejudice to its preference for retention of the existing formula.

The power of the Commission to order required routing is clear. Section 222(e) of the Communications Act of 1934, as amended, relates to distribution of "telegraph traffic by wire or radio destined to points without the continental United States" (Section 222(e)(1)), and is not limited to the distribution of unrouted traffic. The Commission is required to approve or prescribe after a hearing a formula for the distribution of all such traffic, but no restrictions are placed on the Commission as to the manner in which such distribution is to be accomplished, except

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*See, inter alia, WUI's Comments dated July 8, 1974, Reply dated August 16, 1974, Supplemental Comments dated August 1, 1975 and Petition for Reconsideration, dated February 11, 1976.

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that such formula must be "just, reasonable, equitable and in the public interest". Provided that the appropriate hearing procedure is followed and that this public interest standard is met, the Commission has implied power under Section 222 to order any reasonable operational arrangement that it deems appropriate to accomplish the purposes of the statute. Section 4(i) of the Act empowers the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions". In the absence of any provision affirmatively requiring the Commission to permit unrouted traffic to be filed with WUTelCo, there is no question that the Commission has authority to implement its proposal, if it deems it appropriate after full hearing.

One result of requiring the public to route messages would be to force all of the IRCs to increase their marketing efforts so as to acquaint the public with the existence and quality of their services. This in turn would lead to a situation where all carriers would compete fully for all outbound message traffic. To the extent that quality of service might be dependent upon the effectiveness of competition, the result of the proposed required routing may very well be increased efforts by all carriers to improve existing services and to innovate new services.

The added competition which would result would enable all carriers, including the smaller carriers in

the industry, to obtain a share of the market that would be consistent with their dedication of facilities to this service, their marketing effort and their quality of service provided to the public.

The required routing proposal would at one stroke eliminate all of the complexities involved in the administration of a formula designed to govern distribution of the traffic to almost two hundred separate points, and would eliminate all claims of unfair administration of the formula. A requirement for all messages to enter WUTelCo's system already routed will also lead to reduction of cost and improvement in the quality of service. At present, approximately 53,000 messages per week must be routed manually in the quota distribution center in Minneapolis. Under the interim formula, the volume will rise to approximately 59,000 messages per week, since unrouted traffic destined to points for which one carrier is now entitled to all of the unrouted traffic will be manually routed at Minneapolis.* WUTelCo has estimated that the annual cost of the Minneapolis quota distribution center may be as much as $350,000. Under the Commission's proposal, all messages will be routed by the sender and the Minneapolis center would become totally unnecessary. The service delays and costs occasioned by man-

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* See WUTelCo's Motion for Extension, February 19, 1976, p.2.

ual routing would be eliminated.*

No matter how extensive the marketing efforts of the IRC's, it will always be necessary for WUTelCo to advise some persons of the requirement of routing, and to list the carriers available to carry the message in question to its destination. Persons who file messages over the counter or by telephone can be informed by the clerk or operator of the available international carriers. Additionally, posters can be displayed in WUTelCo's offices listing such carriers.

The vast majority of the public should quickly learn that routings are required, and that they must specify the carrier of their choice. Most persons who file cablegrams with WUTelCo will soon realize that they should be prepared to specify the carrier of their choice before contacting WUTelCo.

It is impossible to predict at this time what the economic implications of required routing will be. Of course it will affect only unrouted traffic now filed with WUTelCo. All IRCs will be required to market their services vigorously if they wish to capture the traffic that is presently unrouted, and the ultimate distribution of this traffic will of course depend on the relative success of each carrier's marketing effort. However, the unpredictability of traffic distribution is a natural result of competition between the IRCs, and should

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* Of course, if the effectiveness of the interim formula is postponed until WUTelCo can computerize its distribution functions as requested by WUI, this added expense will be averted.

not be regarded as a disadvantage.

The interim formula, if implemented, would cause the international carriers to increase their marketing efforts. Therefore, such increased marketing should determine message distribution directly. An all-routed arrangement is preferable to the hybrid arrangement contemplated by the interim formula, whereby marketing efforts indirectly control message distribution and costly distribution mechanisms are maintained by WUTelCo. The self interest of each will ensure that the additional amounts spent on marketing will not exceed the marginal benefit to each carrier of the traffic resulting from these marketing efforts, and this expense will be kept within reasonable bounds.

A prerequisite for the adoption of required routing is the assurance that it will operate under conditions that guarantee the complete absence of favoritism to any carrier in WUTelCo's traffic handling procedures. It is anticipated that if a member of the public attempts to file a unrouted message with WUTelCo, he will be requested, in one way or another, to specify a routing, and he will be advised of the carriers available to handle his message. In order to prevent discrimination or unfair advantage to any carrier it is essential that two rules must be scrupulously observed by WUTelCo, and WUI's support of the Commission's proposal is expressly made contingent on their adoption.

The first is that the full name of each international carrier must be used, not an abbreviation, when advising the public of the list of available carriers. This is necessary because both RCA Global Communications, Inc. and ITT World Communications Inc. use their corporate symbols, "RCA" and "ITT", in connection with a wide variety of products and services. The public has been bombarded for years by the corporate logos of these two giant conglomorates. Consequently, the full names of each of the carriers must be used to prevent unfair advantage due to the wide-spread use of the "ITT" and "RCA" symbols.*

Second, the order in which the names of the carriers are listed on any request to the customer to specify a carrier must be changed on a regular basis, so that each carrier in rotation is listed first. The first name on such a list of carriers presented to an unsophisticated customer is more likely to be picked than any other. Since the purpose of requiring routing is to promote competition among the IRCs, the ground rules must provide equality of opportunity, and these two conditions will ensure such equality.

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* It should be noted that the corporate parents of RCA and ITT are both high in the list of the largest corporations in the world, whereas none of their competitors remotely approaches their size.

WHEREFORE, WUI urges that the presently existing formula be retained; but if changes are to be made, the Commission should require all messages filed with WUTelCo to be routed, subject to the two conditions specified above.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Roger P. Newell
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Dated: April 2, 1976

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/s/ Burnadine Diggs

Dated: April 2, 1976

Before the
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In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act.	)	Docket No. 19660 RM-690

TRT TELECOMMUNICATIONS CORPORATION'S COMMENTS ON REQUIRED CUSTOMER ROUTINGS FOR INTERNATIONAL MESSAGE TELEGRAPH TRAFFIC FILED WITH THE WESTERN UNION TELEGRAPH COMPANY

TRT Telecommunications Corporation (TRT) hereby submits its comments on the legal, economic and operational implications of distributing outbound, unrouted message telegraph traffic on the basis of required customer routings as required by the Commission's Report and Order and Notice of Rulemaking, released January 7, 1976 in Docket No. 19660 (FCC 75-1430). In this regard, TRT respectfully states as follows.

I SUMMARY STATEMENT

TRT is in full agreement with the basic principle that in the competitive international message telegraph service, the market shares of the several international record carriers (IRC's) should be determined, to the extent feasible, by customer choice and the competitive efforts of the carriers rather than by an arbitrary allocation formula. TRT also at this time takes no position on the question of the Commission's legal authority under Section 222(e) of the Communications Act to prescribe required customer routing in place of a quota allocation system as the formula for distribution of outbound international message telegraph traffic.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document, filed with the Federal Communications Commission on behalf of The Western Union Telegraph Company, by United States mail, first class postage prepaid, on the following:

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Albina Karen Olson

Dated: April 2, 1976

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However, TRT is convinced that, because of the peculiarities of the international message telegraph market, it would not be possible in the foreseeable future to implement a fair and unbiased required customer routing sy... for the vast majority of unrouted international message traffic filed with Western Union. Any attempt to establish such a system in current circumstances, we believe, would result in a completely arbitrary distribution of unrouted traffic which would not in any meaningful way reflect true customer choice. Moreover, the implementation of such a system under current circumstances would be extremely costly and would unnecessarily inconvenience occasional users by requiring them to make an arbitrary choice of routings among carriers without the information needed to make this choice on a rational basis.

In TRT's opinion, it is only feasible to implement required customer routing at the present time with respect to international message traffic filed by Western Union's Telex and TWX subscribers. Such traffic, however, accounts for only 4% of the unrouted messages accepted by Western Union.

Accordingly, except to this very limited extent, TRT does not believe that it is feasible to implement required customer routing in place of an allocation formula. TRT submits that the interim formula which has been prescribed by the Commission provides for a fair and equitable distribution of traffic in accordance with customer choice and the competitive efforts of the carriers. TRT, therefore, urges the Commission to require the prompt implementation of the interim formula.

II PROBLEMS IN IMPLEMENTING REQUIRED CUSTOMER ROUTINGS

A. Required Customer Selection Could Not Be Implemented in a Unbiased Manner Under Current Market And Operational Conditions.

At paragraph 45 of the Commission's Report and Order and Notice of Proposed Rule Making, the Commission noted that approximately 35% of all outbound international traffic is unrouted and approximately 75% of Western Union transfers are unrouted. The Commission commented that:

> "We believe that this is because the IRC's have not effectively sought to reach these users and that this failure may prevent the efficient operation of a customer-routing system."

The Commission apparently contemplated that, with a more effective sales effort by the IRC's, most if not all, of the customers presently filing unrouted traffic will be apprised of their routing alternatives and be in a position to make an intelligent choice among the carriers.

In this regard, we respectfully submit that the Commission has misconceived the nature of the international message telegraph market. The international telegram is not a product like deodorant, which is used on a regular basis by the majority of the public. Although the entire population of the United States are potential users of international message telegraph service, most people never send an international telegram in their lives and the service is used on anything approaching a regular basis by only a very small percentage of total potential users. Although a significant minority of the population do send a few international telegrams during their life times, there is no practical way of identifying these infrequent users in order to solicit their traffic in an economical manner.

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In this regard, we do not assert that the past efforts of the IRC's have been as effective as possible in soliciting direct routings. We agree with the Commission that these efforts could be improved and we would expect that with the greater incentive for competitive efforts under the interim formula, the percentage of unrouted traffic will gradually decline from its present 35% after the interim formula is implemented. However, it should be recognized that the nature of the international telegraph market does not permit the IRC's to undertake a massive advertising campaign, such as is utilized to sell automobiles or detergent. Moreover, because of the infrequency with which international message telegraph service is used by most people, we would anticipate that, even if such a massive advertising campaign were attempted, the majority of the public would still have no experience or other intelligent basis upon which to make choice among the competing IRC's.

Accordingly, although we would anticpate that the redirected marketing and sales efforts of the IRC's under the interim formula will result in minor decline in the percentage of unrouted traffic, there will continue to be substantial unrouted traffic for many years to come. Indeed, in spite of any increased marketing efforts by the IRC's, we do not anticipate a time in the foreseeable future when sufficient information will be possessed by most infrequent users to make a knowledgeable routing choice among the IRC's. For the foreseeable future

most infrequent users will continue to have no knowledge of the existence of the various IRC's, much less an awareness of the relative merits of the services provided by each carrier. Under these circumstances, it is apparent that a required customer routing procedure would require many customers to make a completely arbitrary choice of routing without adequate information or experience to make this decision.

Moreover, TRT does not believe that such a required customer selection system could be implemented in an unbiased manner, which would be fair to all carriers. As the Commission recognized in its Report and Order and Notice of Proposed Rule Making, procedures would have to be devised for Western Union personnel to inform customers of their routing options. To avoid any favoritism on the part of Western Union, such notification would have to be limited to a listing of the names of the IRC's serving the desired overseas destination. However, even such a listing, we believe, would of necessity bias the selection process. The order of the carriers in the list would be a factor in the customer's selection. Also, an insoluble problem would be presented because of the similarity of the name of Western Union International, Inc. with that of Western Union. If Western Union International were merely listed without qualification, the customer's selection could be biased in its favor. If Western Union International were listed with the qualification that it is not affiliated in any way with The Western Union Telegraph Company, the selection might be biased against that carrier.

Moreover, the customer would in most cases be asked to pick one name out of a list of five company names quickly read to him over the telephone. Under these circumstances he would have difficulty in even remembering the names of all the carriers when making his selection. Thus, most customers would be more likely to remember and select a carrier whose name had a familiar ring to it. In this regard, it is apparent that the selection process would be significantly biased in favor of ITT World Communications Inc. and RCA Global Communications, Inc. because of the public's general recognition of those carriers' corporate parents.

B. Methods for Soliciting Customer Routings of International Telegrams Filed with Western Union.

International messages are accepted by Western Union in three principal ways, via telephone at its CTB's, at its public offices (over the counter and by tieline), and via Telex and TWX. Of Western Union's total unrouted traffic in 1974, 81% was accepted at the CTB's, 15% was accepted at public offices and 4% was filed via Telex and TWX. The procedures for implementing required customer routings would have to be different for each of these acceptance modes.

In analyzing the various procedures which might be required of Western Union for soliciting customer selection of the routing for an international telegram, TRT separated Western Union's services into categories which would require similar solicitation methods. These methods are:

1) Format requirements through an automatic message switch;

2) Printed instructions made available to the customer; and

3) Verbal instructions to customers by Western Union telephone operators and public office personnel

Further, TRT based the analysis which follows on the two assumptions that:

1) Any methods which Western Union might be required to use would be designed, to the extent feasible, so as not to bias the customer's selection of routing; and that

2) Any actual presentation to the customer concerning the requirement for route selection, and particularly where that presentation would be verbal, would for expediency's sake be brief.

C. Methods for Filing International Telegrams with Western Union.

1. Telex/TWX. A Western Union telex or TWX subscriber can file an international telegram by dialing one of the following numbers:

Telex	TWX	Location/Routing
1041	810-621-7800	WU Moorestown/via ITT Worldcom
1042	810-621-7850	WU Moorestown/via RCA Globcom
1043	810-621-7860	WU Moorestown/via Western Union Int'l.
1045	810-621-0477	WU Moorestown/via French Cable Tele.Co.
6044	810-621-0524	WU Moorestown/via TRT Telecom. Corp.
1044	810-621-7870	WU Moorestown/unrouted, unless specifie
6161	910-420-1212	WU Middletown/unrouted, unless specifie

By dialing one of the first five telex or TWX numbers and transmitting the telegram to WU Moorestown, the customer specifies routing for each message filed. If the customer selects telex "1044" or TWX "810-621-7870" and transmits his message to WU Moorestown, the message is considered to be unrouted unless in the message the customer specifies routing via a particular IRC. For all of these numbers, there is essentially no rigid customer format requirement, and WU Moorestown operators manually prepare the WU format for entry into the WU Middletown automatic message switch (Infomaster).

In addition to these numbers, a Western Union telex or TWX subscriber may elect to dial telex "6161" or TWX "910-420-1212" for direct entry of his message into Infomaster. A message filed in this manner is considered to be unrouted unless the customer specifies in the message routing via a particular IRC. The important distinction in this method of filing is that Western Union requires the customer to follow a rigid input message format. If a customer's format does not meet Infomaster's specifications, the customer receives an automatic rejection notice and must correct the format before resubmission.

For all telex/TWX filed messages, Western Union could by changing its handling methods, in effect, require customer routing. For those customers already using Infomaster services, Western Union could change the format requirement to include an appropriate "via" and could reject those messages not specifying routing, for customer correction. Simultaneously, Western Union could eliminate telex "1044" and TWX "810-621-7870", thereby eliminating any unrouted at WU Moorestown. Western Union operators at Moorestown would then insert the "via" and IRC designators in each input message format according to the telex or TWX number dialed by the customer.

TRT believes that these operating changes are feasible and would provide an unbiased method of required customer routing. However, since only 4% of unrouted traffic would be affected, the implementation of these changes would have little effect on total distribution of traffic among the carriers. We therefore believe that there would be little purpose in modifying the interim formula to require Western Union to implement those operating changes.

2. Tie Lines and Messenger Pickup. For these services, Western Union could be required to distribute printed instructions for customer use. The instructions might provide a brief explanation of the requirement to route all international telegrams, and then list the customer's IRC options. However, TRT has found no way of presenting clearly the identification of each IRC without biasing the customer's selection. This is particularly true where the name "Western Union International" might lead a customer to think that WUI is the international part of Western Union. Explaining that Western Union International is in no way affiliated with Western Union could have a negative impact. Furthermore, the order of presentation of the IRC's has the effect of biasing one's selection.

Beyond the problems of biased routing selections, TRT foresees that Western Union would incur additional handling problems in those cases where tie line and messenger pickup service subscribers would either neglect or refuse to specify routing on their message copy. In both cases, Western Union would have to contact the customer from the local Western Union office and request a routing. Moreover, it is probable that some customers either would require more information than Western Union could provide, or would simply refuse to take the time to understand the requirement and, therefore, to route the message. In these cases should Western Union be allowed to reject the customer's message? If not, how would Western Union resolve the conflict? Should there be any circumstances under which Western Union personnel would be allowed to designate a routing? TRT

frankly has no answer to these and many other questions which could arise in implementing required customer routing for such traffic.

3. CTB's and Public Offices. Western Union customers may file international telegrams by dialing a toll-free telephone number, or by walking into a public office. In both cases, the customer comes into direct contact with Western Union operators or office personnel, and in both cases any instructions which might be given by Western Union personnel relating to message routing would likely be verbal. For the reasons expressed above, TRT submits that there is no procedure which could be adopted to inform the customer of his routing options which would adequately explain the requirement and alternatives for routing without biasing the customer's selection. Equally significant, TRT does not feel that a sufficient verbal instruction could be incorporated with Western Union's procedures without decreasing operator efficiency and increasing Western Union's handling costs. Also of concern to TRT would be the need for control mechanism which would deter an operator from arbitrarily selecting a routing without taking the additional time and trouble to solicit a customer response.

III ECONOMIC IMPACT OF REQUIRED CUSTOMER ROUTING

TRT is not able to predict the immediate economic impact of required customer routing on the various IRC's. The landline haul cost which would have to be borne by all carriers and eventually by the public would doubtless increase significantly because of the additional operator time that would be

required by Western Union in accepting international traffic under any required customer routing procedures. Since the customer's solicitation of routings would depend more on name identification than on the relative merits of the services provided by the various carriers, it is difficult to predict the extent of any shift in traffic among the various IRC's under required customer routing from that provided for under the interim formula or under the presently effective formula. However, as discussed above, it is clear that the great majority of the present unrouted traffic would be transferred to ITT World Communications Inc., RCA Global Communications, Inc. and Western Union International, Inc. because of the greater recognition by the public of the names of those carriers in association with the activities of their parent companies or of The Western Union Telegraph Company.

We also believe that there would be substantially less incentive for competition under required customer routing than under the interim formula. Under the interim formula the carriers will be rewarded for their competitive efforts by receiving unrouted traffic in proportion to specifically routed traffic. Under required customer routing, on the other hand, the present unrouted traffic will be arbitrarily distributed for the most part in proportion to the degree of corporate name identification of each carrier on the part of the public.

As discussed previously, required customer routing would not result in massive efforts on the part of the IRC's to capture the business of infrequent users. The unrouted international message telegraph market is clearly not large enough to justify a massive nationwide advertising campaign directed at increasing

the carrier's corporate name identification with the general public. Moreover, in TRT's case, it could not hope to match the advertising budgets of the parents of ITT and RCA. Also, TRT is aware that it could not by any amount of advertising replace Western Union in the minds of the general public as being synonymous with the telegram.

Accordingly, under required customer routing, TRT's advertising and solicitation efforts would continue to be directed toward that small portion of the public which can be identified as regular users of international telegraph message service. Its competitive incentive would be less than under the interim formula, however, since the present unrouted traffic filed by infrequent users would be distributed by an arbitrary customer solicitation process which would have no relation to its competitive efforts.

IV CONCLUSION

WHEREFORE, TRT requests the Commission to dismiss this proceeding, insofar as it contemplates a possible prescription of required customer routing. TRT further requests the Commission to require the prompt implementation of the interim formula to be applicable until such time as it should be amended in a subsequent proceeding in accordance with the requirements of Section 222(e)(3) of the Communications Act.

Respectfully submitted,
TRT TELECOMMUNICATIONS CORPORATION

BY: J. Robert Moman
J. Robert Moman

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April 2, 1976

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Washington, D.C. 20554

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April 2, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
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	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act	)	Docket No. 19660 RM-690
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To: The Commission

COMMENTS OF
THE WESTERN UNION TELEGRAPH COMPANY

The following comments are submitted by The Western Union Telegraph Company (Western Union) in response to the Report and Order and Notice of Proposed Rule Making (FCC 75-1430) adopted by the Commission on December 22, 1975 and released on January 7, 1976.

Introduction

In its Order of January 7, 1976, the Commission found that the existing formula for the distribution of unrouted international cablegram traffic "represents a market-sharing device which is by definition antithetical to the free flow of competition which Congress sought to encourage and enhance";

that for this and other reasons the "present method of distribution embodied in the international formula is unjust, unreasonable, inequitable, and not in the public interest"; and that the present formula should therefore be repealed and replaced--at least for an interim period--by a new formula which eliminates existing "distortions" in distribution patterns and which allocates "unrouted traffic among the IRCs in the same proportions as each carrier handles routed traffic" (Order, pp. 2-3).

The Commission further tentatively concluded "in principle" that it "should proceed in th[e] direction" of requiring customers to specify particular routings for all cablegrams. The Commission acknowledged that the parties had not yet "addressed the legal or economic issues raised" by such an all-routed solution and that it was "[c]onsequently . . . unable at this point to determine the extent of the economic burden which would result from a requirement for specified routings or the proper sharing of that burden between WU and the IRCs" (Order, p. 27). In order to "gather the information . . . need[ed] for decision, the Commission directed the parties to file comments which discuss, inter alia, the "implications of an all routed approach" (Order, p. 28).

The caution manifested by the Commission in its Order appears to us to have been well-advised. Although Western Union had earlier supported a requirement for specific routings,

further reflection and analysis have convinced us that such a course would very likely prove to be unworkable, and, that at best, an all-routed solution would be difficult and very expensive to administer. We, of course, apologize to the Commission for having endorsed the all-routed approach earlier in this proceeding. However, our error would be compounded if we failed to apprise the Commission of our present views, which were arrived at after more careful consideration.

We now believe that the public interest would be better served if the Commission continued in effect the present formula mode (either as embodied in the interim formula or any other suitable formula) of distributing international cablegram traffic. If the formula approach is retained, Western Union could -- pursuant to plans already in effect (and discussed at pp. 15-18 infra) -- provide for the automated distribution of cablegram traffic through its InfoMaster computer. Formula distribution by means of a computer would be quicker, more evenhanded, and far less expensive than the all-routed solution being considered by the Commission.

We discuss below, in Part I, some of the serious problems inherent in a requirement for specific routings and compare the characteristics of this approach to the approach Western Union believes to be far preferable -- i.e., the automatic distribution of traffic pursuant to a formula.

In Part II, we explain the steps we have taken and intend to take in order to computerize the task of tallying and routing cablegram traffic to the IRCs.

I.

THE PUBLIC INTEREST WOULD BE BEST SERVED BY PERMITTING WESTERN UNION TO CONTINUE TO DISTRIBUTE INTERNATIONAL CABLEGRAM TRAFFIC TO THE IRCS BY MEANS OF A FORMULA

A. It Would Be Difficult to Prescribe Instructions Under an All-Routed Approach

If a requirement for customer routings is placed in effect, it would be necessary, according to the Commission, to issue "suitable instructions and operating arrangements, agreeable to all concerned . . . to guide Western Union in presenting the public a mandatory choice among the IRCs" (Order, p. 28). Without such restraints the Commission found there exists the possibility that "prejudice will result" (Order, p. 27). The Commission, however, declined to specify, or to suggest, appropriate guidelines for Western Union on the grounds that "the information . . . before [it was] insufficient to prescribe those instructions and operating arrangements" (Order, p. 28).

Western Union does not have any better information on this matter than the Commission. Nevertheless, from our

vantage point it appears that it would be difficult to formulate an appropriate set of guidelines and that, on balance, retention of a formula approach would better serve the public interest.*/ For example, consider the following problems:

- When informing a customer of the names of the different IRCs whose services are available, which IRC should Western Union list first? Which IRC should it list last?

- Should a Western Union operator be required to inform each customer that Western Union is not affiliated in any way with Western Union International? If this disclaimer is made, it may appear to the customer that we are downgrading WUI's service because we wish to be disassociated from it. If this disclaimer is not made, WUI may obtain an advantage because of confusion on the part of a customer resulting from the similarity in names. ITT has already complained about the "competitive advantage derived by WUI from this name similarity. . ." (ITT Opposition to Petition for Reconsideration, p. 7, filed February 27, 1976). See also, RCA's brief to the Second Circuit (filed February 25, 1976) in support of its motion to

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*/ In its Order the Commission stated that "we expect the parties during this period [the interim formula is in effect] to work out mutually-agreeable procedures for implementation of the all-routed distribution system so that we can avoid later controversy on this point." (Order, p. 28.) Given the conflicting interests of the various IRCs, we see no chance that the Commission's "expectation" here will be fulfilled.

the court to stay further proceedings in this case, p. 24, footnote.

• If the customer specifically asks our operator if all of the IRCs provide equally good service, what answer would be appropriate? It would not be correct to respond affirmatively, since, obviously, different IRCs cannot be "equally good" at all times and on all routings.

• If the customer--in an attempt to make a rational choice between IRCs--asks for information as to which IRC is the most efficient carrier or which IRC has the best completion record, what factual material should the operator refer to which could be helpful to the customer?

The difficulties enumerated above illustrate (1) that one or more of the IRCs is almost certain to be dissatisfied no matter how Western Union's operators inform customers of their available alternatives and (2) that the mechanical difficulties inherent in an all-routed approach are likely to outweigh the benefits of such an approach.*/ These problems will be aggravated by the complexity of the marketing structure for cablegram service. It would be quite difficult for an inexperienced customer to understand -- on the basis of a short telephone conversation -- that Western Union is not the only carrier

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*/ We should like to stress that these difficulties do not stem from any selfish interest on the part of Western Union--which, if present, could be dealt with by appropriate rule or order--but rather from the competing (and legitimate) interests of the various IRCs and the arbiter's role conceived for Western Union.

handling his message; that Western Union can only handle cablegram traffic domestically; that Western Union must turn over his message to one of several international carriers at selected gateway cities; and that the international carrier, in turn, must transfer the message to a foreign carrier for final delivery.

By contrast, none of the "instruction" problems enumerated above even arise if a formula is retained. A formula approach would enable Western Union to route traffic to the IRCs quickly and automatically and, as we show next, at much lower expense.

B. The Cost of an All-routed Approach Would Be Prohibitive

It is impossible to determine the precise cost of implementing an all-routed approach. Necessary information is simply not available.*/ However, even a cursory examination of the problems involved reveals that the cost of requiring customers to specify routings will be completely out of line with any possible benefits to be derived from such an approach and far more expensive than a continuation of a formula mode of distributing international traffic.

At present, approximately 3 million cablegrams a year -- over three-fourths of the total cablegram traffic

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*/ We would note that in its January 7 Order the Commission itself did not attempt any analysis of the costs required to implement an all-routed approach.

originating on Western Union's system -- are not routed by the customer via a particular IRC (Order, p. 11). As the Commission recognizes, it will be necessary to reduce the number of unrouted telegrams through "expanded" IRC "solicitation efforts" if the "customer routing system [is to] work smoothly and efficiently" (Order, p. 27).

However, apprising consumers of the supposed benefits of sending traffic via a particular IRC will obviously not be an easy or inexpensive task. Although Western Union has not performed any recent marketing studies in this area, our experience indicates that a substantial percentage of the cablegrams handled by Western Union are sent by smaller users, who might typically send one or two or perhaps six cablegrams a year. Larger users who have substantial overseas record requirements could generally be expected to rely upon telex or even private line service.

Our understanding here is shared by ITT and RCA. ITT has advised the Commission that "The simple fact . . . is that the preponderance of the remaining unrouted traffic is believed to be 'social' traffic which is characterized by very infrequent transmissions per user." (ITT Opposition to Petition to Stay, p. 7, filed February 23, 1976.) Similarly, RCA stated in a brief to the Second Circuit in support of its stay motion (p. 24, footnote) that

> "We think it likely that an adequate examination . . . would show that the originators of most unrouted telegrams are infrequent international communicators who are not familiar with, and who have scant reason to be concerned with, the intricacies of international telecommunications. It is not clear what efforts of salesmanship could reach such persons or, if they were reached, could articulate differences between the IRCs which would be meaningful for their limited purposes."

Any attempt to reach occasional cablegram users and acquaint them with the merits or demerits of the various IRCs to the point where they feel compelled to specify a particular routing would require, as ITT has stated, "an extensive and expensive nationwide advertising campaign . . ." (ITT Opposition to Petition to Stay, p. 7). RCA takes a similar position and estimates that the new advertising campaign "expected" by the Commission would "lead . . . to millions in new costs " (Petition for Stay, p. 6, filed February 11, 1976). It further states that its own solicitation expenses would increase "dramatically" by $342,600 a year "if it is seriously going to try to effectively reach users in the hinterland who do not now route and who number in the hundreds of thousands" (Petition for Stay, p. 13).*/

While we cannot verify RCA's figures, it is apparent that nothing much could be accomplished in terms of "educating" the many thousands of small and widely dispersed users throughout the country unless expenditures of upwards of $1 million per annum are made and that any real attempt to decrease the number of customers sending unrouted cablegrams will probably require an advertising campaign costing substantially in excess of this figure.

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*/ The only difference between ITT and RCA on this point is ITT's claim that RCA and the other IRCs will not actually spend the additional funds necessary for a new advertising campaign. We believe that ITT is correct here. (See pp. 13-14, infra.)

In addition to these advertising or solicitation expenses, substantial expense will be incurred in administering an all-routed solution. Here again, precision is not possible. However, cablegrams are generally received by Western Union at its centralized telephone bureaus (CTBs) and we can reliably estimate that calls to these CTBs cost Western Union 45¢ to 50¢ per minute. Even if it is optimistically assumed (a) that the IRCs can halve through solicitation the number of unrouted cablegrams and (b) that it will take only an average of 90 seconds to explain the choice between IRCs to the remaining customers, this would still mean that an all-routed approach would involve over $1 million in administration expenses alone.*/ Thus, the total cost for advertising and administration would exceed -- probably by a substantial amount -- $2 million annually.

This is several times the cost of distributing cablegram traffic by means of a formula. At the present time, Western Union sorts and tallies cablegram traffic manually at its Minneapolis reperforator center. It is estimated that under the new interim formula these operations, if they continue to be performed manually, will cost approximately $474,000 a year. Moreover, although this expense is less than a quarter of the cost of an all-routed solution, it can be reduced substantially if -- as Western Union intends -- the distribution function is computerized and handled automatically.

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*/ I.e., 1.5 million cablegrams x 1.5 minutes per cablegram x $.45 per minute equals $1,012,500 per annum.

As described in Part II, on April 15, Western Union Information Services (a wholly-owned subsidiary of the Western Union Corporation, the Telegraph Company's parent) will begin the programming work necessary to automate the distribution of cablegram traffic. By November 27, 1976, Western Union's InfoMaster computer will have the ability to tally and route to the correct IRC all cablegrams which do not contain errors in format or routing information. Thereafter, by April 1, 1977, Western Union will also have the ability to correct such errors and return them to the computer to be handled automatically. (See, pp. 17-18, infra)

Automation will cost approximately $350,000. After it is complete, however, the cost of distributing traffic in accordance with the new interim formula would probably not exceed $50,000 a year.

Let us assume, for purposes of illustration, that the $350,000 cost of automation is amortized at a rate of $50,000 a year. If this $50,000 capital cost is added to the $50,000 annual operating expense, the total cost of $100,000 required under the formula approach would be less than 5% of the $2 million annual cost of having each customer specify a particular routing.

C. The IRCs Have No Incentive to Expend the Substantial Funds Necessary to Familiarize Cablegram Users with Their Services

As already noted (p. 8), the Commission found that the continued "failure" of the IRCs to reach those users who do not choose to specify routings "may prevent the efficient operation of a customer routing system . . . (Order, p. 27). The Commission stated, however, that it "expected" the IRCs to eliminate any recognition problem "by expanding their solicitation efforts." (Order, p. 28.)

Any assumption or "expectation" that the IRCs would expand their solicitation efforts appears to us to be completely groundless. Certainly there is no incentive for the IRCs to expend substantial sums advertising their cablegram service in order to attract hinterland customers who do not now specify routings.

On the one hand, the available market is limited and unenticing. Only 3 million unrouted cablegrams were sent in 1974 and the total revenues for these messages amounted to only about $7.5 million.*/ The number of cablegrams sent has also declined in recent years (See RCA Comments in this proceeding, filed July 8, 1974, p. 13.) and it is unlikely

*/ This $7.5 million figure was derived by multiplying total cablegram traffic revenues of both Western Union and the IRCs for 1974 ($21,486,392) by the percentage of unrouted traffic (35%). (See Order, p. 11.)

that this service is now very profitable.*/

On the other hand, for reasons explained earlier (pp. 8-10), it will be extremely difficult for the IRCs to induce a substantial number of customers to specify routings. The small and widely dispersed users of cablegram service cannot be "educated" or even reached without an expensive nationwide advertising campaign.

Thus, any reasonable cost-benefit analysis clearly would deter the IRCs from undertaking a substantial expansion of their existing solicitation efforts for cablegram traffic. ITT has already taken the position that expenditures for this purpose would be "highly imprudent." (ITT Opposition to Motion to Stay, p. 7, filed February 23, 1976). Thus, ITT stated that cablegram users who do not specify routings

> "simply are not considered reachable by ordinary IRC marketing efforts. In order to establish a 'carrier consciousness' among those users would require an extensive and expensive nationwide advertising campaign which, it is submitted, cannot be justified based on any reasonable expectation of increased traffic." (ITT Opposition, p. 7.)

It is inconceivable to Western Union that the other IRCs would

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*/ RCA, for example, has repeatedly complained that cablegram service no longer yields a fair rate of return. (See, e.g., RCA Application for Review filed October 20, 1975 (In the Matter of TRT Telecommunications Corp., File No. I-T-C-2462-9)).

reach a different conclusion.*/

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For the reasons described above, the adoption of a requirement for customer routings cannot be considered to be in the public interest. By any reasonable standard of comparison, such an all-routed solution is far inferior to the present formula concept of distributing cablegram traffic.

Although the matter is not entirely clear, the Commission's tentative selection of an all-routed approach, appears to be based on the assumption that this solution would somehow maximize "customer choice." (See Order, pp. 3, 27.) If this is indeed the Commission's view, it does not appear to us to be sound.

Freedom of choice is available to cablegram users under the existing formula mode of distribution. A customer

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*/ TRT stated in its Opposition, p. 6 (filed February 23, 1976), to RCA's stay motion that it "does not intend to increase its marketing budget as a result of the Commission's Decision," but that it will "redirect its marketing efforts to place greater emphasis on the solicitation of public message traffic." TRT does not indicate the extent of this "redirection." We cannot believe, however, that TRT seriously intends to shift a substantial portion of its advertising budget away from highly lucrative telex traffic to far less lucrative public message traffic.

can specify any available IRC to carry his traffic overseas. He can also choose not to specify a particular IRC. Although we have no quarrel with the idea that a customer should be allowed freedom of choice, we believe that there is little to be gained in forcing him to exercise this choice. A refusal to respect the customer's decision not to make a selection here is faintly reminiscent of the attitude of the Boy Scout who insisted upon helping an old lady across the street even though she didn't want to go.

We would also note our view that the reluctance of customers to specify routings is entirely understandable. Occasional users of the IRCs service would have no rational basis for selecting the "best" IRC.

II.

WESTERN UNION INTENDS TO AUTOMATE THE DISTRIBUTION OF CABLEGRAM TRAFFIC AS SOON AS POSSIBLE

Shortly before the Commission issued its January 7 Order, Western Union had completed plans -- based on then known requirements -- to enhance the capabilities of its InfoMaster system by adding a CRT (cathrode ray tube) Traffic Director which would perform the following functions for cablegram and telex/TWX traffic:

1. Interception of Errored Telex/TWX Traffic -- The Traffic Director would be used to intercept and correct errored cablegram and telex/TWX messages that are input daily from telex/TWX stations directly into the InfoMaster computer.

2. Telex/TWX International Outbound Relay -- The CRT Traffic Director would take over the international outbound cablegram message refile center at

Moorestown and provide for a more efficient method of handling the refile function.

3. International Outbound Routing Assistance -- The Minneapolis reperforator center which presently handles the international cablegram distribution function would be phased out and cablegrams would be sent instead to the CRT Traffic Director where they would be flashed on a CRT screen so that they can be tallied and routed by CRT operators. Although the CRT screen would not eliminate the need to distribute cablegrams manually, it would make such traffic easier to handle.

Since the Commission had not yet issued its January 7 order when these original plans were made, Western Union assumed that the CRT Traffic Director would handle the traffic now handled by Minneapolis based on distribution requirements for the formula now in effect. As Western Union explained in an earlier Motion for an extension in this proceeding (filed February 19, 1976), under the existing formula most unrouted traffic to exclusive points is already being distributed automatically through the InfoMaster computer. Such automatically allocated exclusive traffic presently accounts for about half of the total unrouted traffic Western Union receives. Accordingly, only the remaining half of the unrouted cablegram traffic would have had to be flashed on CRT screens and sorted manually.

The new interim formula, however, eliminates "exclusive" points and requires that all 59,000 unrouted cablegrams received each week be Western Union be sorted and tallied manually. In addition to doubling the number of messages to be handled in Minneapolis, the sorting and tallying process would become more complex because

(a) The number of separate overseas destinations would be increased from 34 to 195, and

(b) The messages themselves would have to be tallied in multiples of 100, whereas, at present, messages are tallied on the basis of simpler ratios.

The increased volume of the traffic to be handled manually and the increased complexity of the sorting process almost doubles the cost of distribution. As noted earlier, Western Union estimates that under the interim formula manual sorting and tallying of cablegram traffic would require an expense of approximately $474,000 annually.

Because of this substantial increase in the expense for manual handling, it has become increasingly apparent that the best approach for all concerned would be to automate the distribution of cablegram traffic as soon as possible by routing it through the InfoMaster computer. Once computerized, the more complex formula proposed by the Commission would pose no special problem. In order to obtain the necessary capability of handling cablegram traffic automatically, Western Union decided to modify its original CRT Traffic Director plan and pursuant to revised arrangements recently concluded with Western Union Information Services, that company will undertake, beginning April 15, 1976, to develop the programs necessary to route cablegram traffic through the InfoMaster computer.

We expect that the first stage of this work will be completed by November 27, 1976. After this date, Western Union will be able to route and tally automatically all cablegrams

which do not contain errors in format or routing information. Unrouted messages containing such errors will be diverted to the CRT Traffic Director and flashed on a CRT screen. If it is possible to discern the correct destination and addressee for such cablegram despite any error, the cablegram will be routed manually to a specific carrier by the CRT operator in accordance with the formula. Such manual routing would, of course, require that a separate tally be kept for errored traffic.

Automation is scheduled to be completed by April 1, 1977. On this date operators will have the ability to correct format or routing information errors in cablegrams as they appear on CRT screens. After being corrected, the messages will be sent back to the computer which will sort and tally them in the same way it handles other unrouted traffic.

We recognize that the entire question of allocation of cablegram traffic to the IRCs is now in a state of flux and that it might, therefore, be suggested that Western Union wait until all the issues in this proceeding have been resolved by the Commission before expending substantial funds on an automation program. However, we believe, on balance, that the most sensible alternative available to Western Union is to proceed to automate the handling of cablegram traffic without further delay. In reaching this conclusion we have relied upon the following considerations:

1. The installation of the CRT Traffic Director, a project to be undertaken regardless of the outcome of this proceeding, will require significant changes in existing InfoMaster

computer software. There will be a savings of both time and money if automation of the cablegram distribution function proceeds at the same time these other changes are being made. We would estimate that to delay automation for even six months would increase the cost of the work to be done by from $50,000 to $100,000 and expand the time for completion by several months over and above the initial delay period. Thus, waiting until matters are resolved here could result in additional cablegram distribution costs which could perhaps amount to about $500,000.*/

2. Even if--contrary to views expressed herein--the Commission decides in favor of an all-routed approach, we do not believe that it can implement that solution within the near future. The Commission noted that the "smooth and efficient" operation of the all-routed approach requires that the public become familiar with the IRCs' services so that they can rationally exercise the choice between IRCs which they will be required to make. The Commission explained that it would rely upon the IRCs to increase their solicitation efforts to promote a greater awareness on the part of the public of the

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*/ Let us assume that the matters herein are finally resolved nine months from now and that the Commission decides to retain the interim formula as a permanent means of distributing cablegram traffic. This would mean that automation of the distribution function would cost at least $50,000 more and that it would be delayed for approximately one year. During this one year period, cablegram traffic would have to be sorted and tallied manually at a cost of approximately $474,000. The only offset would be approximately $50,000 which would continue to be required to operate after automation. Accordingly, the net loss would be about $474,000.

competitive alternatives available. Obviously, as has already been discussed, this task cannot be accomplished overnight. The best that could be hoped for here is that the public could be "educated" after an interval of several years. The Commission appeared to recognize the long-term nature of the interim formula by specifying in Paragraph V of the formula that quotas should be recalculated at six month intervals.

Since the cost of handling traffic manually pursuant to the interim formula is $474,000 a year and since this can be reduced to only $50,000 per year through automation, the total $350,000 cost of automation would be more than offset within a single year. Thus, if the interim formula is in effect until April 1, 1978--a total time period of less than two years--it will have proven cheaper to automate than to continue to handle traffic manually. Given the problems involved in implementing an all-routed approach, the odds certainly favor the interim formula lasting at least that long.

In its order the Commission "agree[d] with WU that it should be reimbursed for the reasonable costs it incurs in effecting distribution . . ." (Order, p. 30). The Commission further stated "We see no reason why WU cannot automate the handling of traffic under the new formula if it believes that will be in its interest" (Order, p. 30). In view of these statements and in view of all the other factors involved, Western Union believes it has made the correct decision here. If the IRCs believe otherwise, they should immediately inform

the Commission of their views so that the Commission can review our action here. We are open to any reasonable approach which may be suggested. Our primary concern is that no question arise as to our right to recover all reasonable expenditures incurred by us in order to route traffic to the IRCs. As the Commission's order makes clear, we are entitled to this protection.

CONCLUSION

For the foregoing reasons, Western Union respectfully requests that the Commission continue to require the traffic be distributed to the IRCs through a formula.

Respectfully submitted,

THE WESTERN UNION TELEGRAPH COMPANY

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April 2, 1976

Before the
Federal Communications Commission
Washington, D. C. 20554

In the Matter of	)	
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International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed Under Section 222 of the Communications Act.	)	Docket No. 19660 RM-690

TO: The Commission

REPLY COMMENTS

RCA Global Communications, Inc. (RCA Globcom) hereby submits its reply comments on the proposal set forth in the Commission's Report and Order and Notice of Proposed Rulemaking, FCC 75-1430, (Order) which would require all international telegrams originating on The Western Union Telegraph Company (Western Union) system to be routed by the sender. It is apparent after receiving the comments of the other carriers interested in this matter that there is almost unanimous agreement* that the all-routed proposal has serious patent defects in that it would ad-

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*Only Western Union International, Inc. supported the all-routed proposal for the obvious reason that it alone will unjustly benefit as explained below.

versely affect both the public and the carriers by greatly increasing costs, delaying service and adding to user confusion.

In view of the defects of the all-routed proposal, it is equally apparent that it will not be prescribed by the Commission. This being so, the Commission must reexamine and reverse its proposed repeal of the presently effective formula and the prescription of the interim formula. As explained below, the only stated basis for the interim formula was to act as a bridge from the present formula to the all-routed concept. Given the defects outlined below and the consequent elimination of the all-routed proposal as a feasible end point for the Commission, the entire rationale for the interim formula falls.

The All-Routed Proposal Should Not Be Prescribed By The Commission

RCA Globcom, Western Union, ITT World Communications Inc. (ITT), and TRT Telecommunications Corporation (TRT) reached the same conclusion with respect to the Commission's proposal--the public interest will only be adversely affected by its prescription. When it is considered that each of these carriers have differed widely in previously filed comments on how, if at all, the present

formula should be changed, the Commission should give great weight to this consensus. The three main points made by the carriers were:

1. Extremely Large Advertising And Soliciting Costs Would Be Incurred.

In its comments, RCA Globcom stated that, based on its long experience in the telegram field, it had found unrouted telegrams (which comprise 77% of the Western Union originated traffic*) are sent for the most part by people who use the service only once or twice a year for social purposes such as notifying relatives of births, deaths and other sporadic events. The market was further described as being spread geographically throughout the United States. ITT, Western Union, and TRT agreed with this description. The combination of these two factors, i.e. sporadic use and wide geographical distribution of users, would make advertising and solicitation campaigns directed at the business of such occasional users extremely costly.

2. Unreasonable Burdens Would Be Placed On Western Union.

Regardless of whether the international carriers actively

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*See the Commission's Report and Notice of Proposed Rulemaking, FCC 75-1430, released January 7, 1976, at p. 12.

solicit the occasional users of international telegram service, Western Union would continually be placed in the position of explaining to a large percentage of users that the Commission requires that they must select one of several international carriers to handle their international telegram. As described in Western Union's comments, it would be difficult, if not impossible, to formulate an appropriate set of guidelines which would govern the manner in which Western Union explained to these customers the need for routing. Moreover, impractical as it may be to formulate the guidelines, it would be impossible to assume that clerical employees could properly communicate them to frequently impatient and unconcerned filers. The conclusions are that one or more of the international carriers is almost certain to be dissatisfied no matter how Western Union's clerical force informs customers of their available alternatives and that the mechanical difficulties inherent in the all-routed approach will far outweigh any conceivable benefits of such an approach. These "instructional" problems, as Western Union stated, would not exist if <u>any</u> formula were retained that provided for the distribution of unrouted traffic.

RCA Globcom agrees with the assessment concerning

"instructional" problems as presented by Western Union. There is no practical way which would permit Western Union to explain all the relevant facts in an unbiased manner to an individual who may be uninterested in which overseas carrier handles the international carriage of the telegram. These questions of practicality also must be considered in the context of the additional costs that they will impose on Western Union and eventually the international carriers, which Western Union estimates would involve over $1 million in administration costs alone.

3. Western Union International Would Receive An Unjustified Benefit.

The third item on which ITT, TRT, Western Union, and RCA Globcom agree is that the implementation of the all-routed approach would give Western Union International an unjustified benefit as a result of the similarity between its name and Western Union's. ITT quite accurately summarizes the problem in this manner: "Regardless of how the two carriers may feel as to their distinctions and differences, the generally unsophisticated, infrequent filing, unrouted user is not likely to appreciate what to him would be highly subtle legalistic distinctions. He is

probably conditioned to the view that the words 'telegram' and 'Western Union' are basically synonymous." Page 7.

RCA Globcom's experience has been that there is confusion on the corporate relationship between Western Union and Western Union International even among some of the more knowledgeable users of international communications.* Thus, on the basis of all the information available to RCA Globcom, the implementation of the all-routed concept would create an unfair competitive situation in favor of Western Union International.

In assessing the validity of this point, it must be emphasized that only Western Union International supported the all-routed proposal. It must be assumed that its position was the result of an evaluation which indicated that the implementation of the all-routed proposal would benefit it more than the other carriers because of the identification of the name "Western Union" with "telegram".

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*As noted in our last comments, a market survey conducted among 1,031 telex operators and communications managers in the gateway cities and in 18 nongateway cities in January 1973 by Palshaw Measurement, Inc. of Southport, Connecticut results showed that 40 percent of the respondents who said that "Western Union" was the carrier they used did not know whether it was the domestic or international carrier and 4 percent felt that it meant only the domestic carrier notwithstanding that the original question addressed itself to international carriers only.

It is also significant that one of the two conditions which Western Union International would have imposed, if the all-routed proposal were accepted, is that the full name of the international carriers be used when advising the public of the list of available carriers. While, ostensibly, Western Union International states that this condition would avoid an unfair advantage accruing to ITT or RCA Globcom, it is apparent upon examination that the real beneficiary is Western Union International.

Clearly, if a customer is to be influenced by the use of "ITT" or "RCA", it would make little difference whether those words stood alone or were part of the full name of the respective carriers. On the other hand, the abbreviation of Western Union International, WUI, would be much less identifiable in the minds of the public. By requiring the full name of its company, it simply reinforces the confusion that exists. Again, to the average occasional user, telegram means "Western Union" and whether the word "International" is added or not will not change this impression.

The All-Routed Proposal Would
Not Yield Any Benefits To The Public

Western Union International stated in its comments that

"the result of the proposed routing may very well be increased efforts by all carriers to improve existing services and to innovate new services." Page 3. This is totally unsupported by any facts and, most significantly, is directly contrary to all of Western Union International's prior comments. For example, Western Union International has said in connection with other changes in the existing formula that:

> All carriers operating under the Formula are successfully and efficiently transmitting the traffic the Western Union Telegraph Company (WUTelCo); procedures for distributing unrouted messages are operating satisfactorily and without undue delay in most instances . . . .Comments of Western Union International, Inc., July 8, 1974, page 2.

and

> Consequently, the question that is before the Commission in this proceeding is solely concerned with how the unrouted message pie shall be sliced; not whether or not the public will benefit from a change in the formula. Whatever the Commission decides, service to the public will not be improved in the least. In fact, an abrupt change in the pattern of distribution of unrouted traffic may well impair service to the public, if as a result some carriers receive more traffic than they are set up to handle and other carriers have capacity which becomes idle. Reply of Western Union International, Inc., August 16, 1974, page 2. (Emphasis added).

and

> [E]very carrier has strong incentives to increase its grade of service as much as possible, so as to foster a net increase in traffic. Reply of Western Union International, Inc., August 16, 1974, page 8.

We submit that Western Union International's present position on service improvement can only be reconciled with its past statements in one way--it recognizes the bias in the all-routed proposal in its favor.

The Commission Should Reexamine And Reverse Its Proposed Action On The Interim Formula

The Commission in its December 22, 1975 decision found that the public interest would be best served by allowing the public to make its own decisions as to the international carrier used to carry the telegram overseas. While the Commission's ultimate objective was the all-routed proposal, it did not prescribe that plan because it stated that the record then before it was inadequate. Instead, it prescribed an interim formula which presumably was to act as a bridge between the presently effective formula and the all-routed one before its prescription.*

We submit that now that the all-routed proposal has been demonstrated to be totally unworkable, the Commission is left

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*The Commission, among other things, stated:

> We expect that the IRCs will use this period to expand their solicitation efforts, so that the customer routing system will work smoothly and efficiently. Further, we expect the parties during that period to work out mutually-agreeable procedures for implementation of the all-routed distribution system so that we can avoid later controversy on this point.

with a bridge to nowhere. Indeed, the basis for the bridge, i.e. the interim formula, was so completely founded in the all-routed proposal that the demise of one must also bring the end of the other. Therefore, RCA Globcom believes the Commission must re-examine its position on the interim formula in the light of the comments filed on the all-routed proposal. After such reexamination, it should reverse its proposed action and permit the existing formula to continue.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

s/Francis J. DeRosa

s/Carl J. Cangelosi

Its Attorneys
60 Broad Street
New York, New York 10004

May 5, 1976

CERTIFICATE OF SERVICE

I, Audrey Gadson, hereby certify that on this 5th day of May, 1976, I mailed a copy of the foregoing document by United States mail, postage prepaid, to the following:

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(Counsel for TRT Telecommunications Corp.)

s/ Audrey Gadson

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, including possible revision to the Formula prescribed under Section 222 of the Communications Act.	)	Docket No. 19660
	)	RM-690
	)	
	)	
	)	

To: The Commission

REPLY COMMENTS

ITT World Communications Inc. (ITT Worldcom) hereby submits its Reply Comments respecting the Commission's proposal to require, at some point in the future, that all outbound international telegraph message traffic filed with The Western Union Telegraph Company (Western Union) be specifically routed by the sender via one of the international record carriers (IRCs).

In the initial comments in this proceeding, three of the four IRCs participating in this traffic distribution and Western Union expressed strong opposition to the implementation of an all-routed concept, citing substantially increased costs and administrative burdens which were anticipated, with little if any, attendant public benefit. And, the only carrier which supported the mandatory customer routing concept, Western Union International, Inc. (WUI), would gain. as

a result of its name similarity to that of the domestic carrier, such an apparent advantage over other IRCs from the required routing proposal that its support can be dismissed as an exercise in enlightened self-interest. 1/

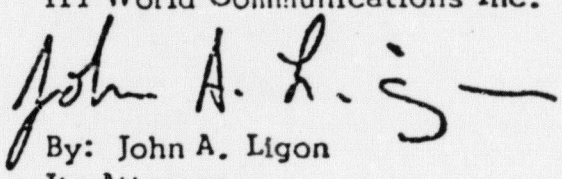
While ITT Worldcom reaffirms its willingness to fully cooperate with the Commission in further studies or proceedings directed toward the possible long-term adoption of an all-routed concept, it submits that for the present and the foreseeable future this all-routed proposal has been clearly demonstrated to be unfeasible. The so-called "interim" formula, which is a product of an exhaustive record extending over almost 12 years of proceedings, clearly provides a fair, just and equitable basis for the distribution of unrouted international message traffic filed with Western Union.

1/ To the extent that WUI raises substantive considerations in support of its position, these considerations are clearly shown to be in error by the initial comments of other carriers, particularly Western Union.

The Commission should effect the early implementation of that formula, by vacating the stay presently in effect, and defer consideration of the all-routed concept until such time as, and if, that concept appears to be administratively feasible.

Respectfully submitted,

ITT World Communications Inc.



By: John A. Ligon
Its Attorney
67 Broad Street
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Dated: May 10, 1976

CERTIFICATE OF SERVICE

I, Shawn Eames, hereby certify that on this 10th day of May, 1976, I mailed a copy of the foregoing " Reply Comments" by United States Mail, postage prepaid, to the following persons:

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Shawn Eames

Shawn Eames

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act	)	Docket No. 19660 RM-690

To: The Commission

REPLY COMMENTS OF
WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) hereby submits its Reply Comments on the proposal of the Commission to require customers filing overseas cablegrams to specify the international carrier of their choice, in accordance with the Commission's Memorandum Opinion and Order released January 7, 1976 (FCC 75-1430).

In its opening Comments, WUI advocated the adoption of the Commission's proposal, and showed that the public interest would be served by requiring all outbound cablegrams to be routed. The other responding carriers raised various objections to the proposal, but none demonstrated that it was impractical or infeasible. On the contrary, it is WUI's view that it is not only practical but will provide significant long term benefits to the public.

Required Routing is Technically Feasible

There are three principal classes of originators of outbound cablegrams filed with the Western Union Telegraph Company

(WUTelCo). These are: (a) Telex and TWX subscribers; (b) patrons desiring to file over the counter; and (c) patrons who prefer to file cablegrams by telephone. It is clearly possible and convenient for each class of customer to specify their choice of carrier. Additionally, of course, the public may file cablegrams directly with the international record carriers (IRCs).

A. Telex and TWX Subscribers. These subscribers are already permitted the choice of calling either WUTelCo or the IRC's to file cablegrams. This choice can and should be maintained under the Commission's proposal, while ensuring that all messages filed by such subscribers will be routed. In order to accomplish this goal, it will be necessary simply to permit filing with WUTelCo only over telex and TWX access numbers which reflect the subscriber's choice of carrier. The appropriate mechanism already exists in the "1040" series of telex and TWX numbers, which provide access to WUTelCo's International Message Center at Moorestown, N.J., for ultimate transmission to the IRC's. By dialing 1041, 1042, 1043, 1045 or 6044, or equivalent TWX numbers, each of which is specific to one of the IRC's, a subscriber can file a message which is deemed routed by reason of selection of a particular carrier's number. See Western Union Telegraph Co., 11 FCC 2d 946 (1968).

In order to implement the Commission's policy, it would only be necessary to eliminate the two telex numbers which permit the filing of unrouted messages, 1044

(to Moorestown) and 6161 (to Middletown, Va.--WUTelCo's computer center), along with the associated TWX numbers. So long as a mechanism for filing unrouted messages remains, the goal of fully routed traffic will be difficult to achieve, since many subscribers will use the easy path which does not require a decision.

The result of elimination of the "no decision" path would be that WUTelCo subscribers would automatically be required to specify their choice of carrier. Any subscriber who has not chosen a carrier would in most instances consult the WUTelCo Telex directory, which would list the numbers corresponding to each carrier. The directory would also display the advertisements of the IRC's, thus providing the subscriber with information on which to base a choice.

Until subscribers are aware of the requirement of dialing a specific telex or TWX number for the selected IRC, it may be necessary for an interim period to advise subscribers who dial 1044 or 6161 that they must choose a carrier, either by filing directly with an IRC or dialing the appropriate "1040" number. The computer would be programed to list the carriers providing service, together with the telex or TWX numbers for direct access or through WUTelCo's International Message Center.

A requirement to eliminate the 1044 and 6161 numbers would not only achieve the Commission's objective of required routing for this class of originators, but would have additional benefits to the public. To file a cable

through this port, the subscriber must follow a rigid format in which every element of the message must be typed in the exact form and exact sequence specified. See pages 40 and 64 of the WUTelCo Telex Directory. If any error is made in this format, the message is automatically rejected and the subscriber must try again. In contrast, messages filed with WUI or the "1040" series of telex numbers are subject to far less rigorous requirements. For example, under WUI's simplified format the only requirements are for the address, class of service and end of message indicator.

Additionally, messages entered into the WUTelCo system by the 6161 number which contain errors other than format errors, such as garbled texts, are switched automatically by the computer, with no attempt to correct the garbling or other error, or to contact the customer. The result often is the transmission of a message which may not accomplish the purpose of the subscriber and the customer suffers the consequent expense and delay. Messages which are filed with the 1040 series can be checked for such errors and corrected at an early point.

B. Filing in Person. Persons desiring to file messages over-the-counter at WUTelCo's public offices can easily and simply be informed of the requirement of routing. To ensure that the public makes an informed choice, WUI suggests that each member of the public submitting a message that has not been pre-routed be given a brief pamphlet containing descriptions of the available carriers. This pamphlet could contain six sections, one containing a brief description of the WUTelCo/IRC relationship and the requirement of routing, and one section for each of the five interested carriers, with a description or advertisement written by the carrier concerned. Under these circumstances there can be no question of confusion by the public or favoritism by WUTelCo's clerks.

C. Filing by Telephone. Unrouted messages attempted to be filed by telephone with WUTelCo's Central Telephone Bureau present a different but manageable problem. WUI believes that the statements of WUTelCo that requesting a routing from the customer will be prohibitively costly are considerably exaggerated. Most users obtain the telephone number of the CTBs from the telephone directory. It would be a simple matter for WUTelCo to place notices in the regular and classified telephone directories, stating that cablegrams must be routed and listing the available carriers. The IRCs would of course be free to place whatever additional advertisements they deem advisable. Since the customer will then be aware of both the requirement and the list of car-

riers, it will be a simple and quick matter for the operator to request a routing from the customer.*

Advertising Costs Will Be Reasonable

It is alleged that an effort to reach each and every potential user of cablegrams to explain the virtues and merits of each IRC would be so expensive as to preclude the requirement of routing. This is based on an erroneous assumption. It is certainly not necessary to advise each and every member of the United States population of the existence and advantages of each carrier in order to accomplish the Commission's stated goal. While some advertising would be beneficial in large metropolitan areas, generally the telephone directory notices and the brochures available from WUTelCo offices would provide adequate notification of the availability of the various carriers. Beyond that, by the second or third occasion of use of the facilities, a

* WUTelCo's calculation that the cost of requesting routings would run to approximately $1,000,000 a year is inaccurate. Under the circumstances outlined above it would take far less than 90 seconds to request a routing, as claimed by WUTelCo, since the customer would be aware of the requirement and have a list of carriers before him. The 1.5 million cablegrams that WUTelCo claims is involved is inaccurate since this figure includes messages filed by other means. WUTelCo ignores the fact that some of these messages filed through the CTB are not social but business messages filed by persons who are more sophisticated in the use of international communications than the average social user. Additionally, after the first experience, subsequent calls to file cablegrams will be much quicker since the specific user involved will already be aware of the requirement of routing.

user will have at least a preliminary idea of his preference and will be able to specify the carrier of his choice without difficulty.

No carrier will spend more on advertising than it expects to benefit by the traffic to be gained by such advertising. Thus the visions of millions of dollars spent in nationwide television, newspaper and magazine advertising are simply unrealistic. Additionally, WUTelCo has the ability to reach all of its Telex and TWX subscribers at very low cost by sending broadcast messages to all stations on its system during night or off-peak hours. WUTelCo presently uses this method periodically to advertise its own domestic services. An example of such a broadcast message is appended as Attachment A. This broadcast facility should be made available to the IRCs, without charge or at charges reasonably related to WUTelCo's incremental cost, for the purpose of advertising and promoting their services, and acquainting the public with the appropriate Telex and TWX numbers for access.

The Public Will Not Be Confused

In their attempt to defeat the Commission's proposal, the other responding carriers allege that the public will confuse WUI and WUTelCo. No evidence is offered in support of this allegation except a partisan public opinion survey commissioned by RCA Global Communications, Inc. (RCA Globcom). The Commission has heard this argument before, and has dismissed it after providing for certain safeguards.

For example, in the proceedings leading to WUTelCo's divestment of its Cable Division, the predecessors of ITT World Communications, Inc. (ITT Worldcom) and RCA Globcom argued that the public would believe that WUI was affiliated with WUTelCo. The Commission specifically approved the use of the name "Western Union International, Inc.", with the provisos that WUI indicate that it is an international rather than a domestic carrier and refrain from any indication that it is affiliated with WUTelCo, and that WUTelCo instruct its employees not to extend any preference to WUI. The Commission stated that "We believe that such a course is not only in the public interest but also meets the legitimate objectives of American [the acquirer of the Cables Division] and allays the justifiable fears of the other carriers". Western Union Divestment, 30 F.C.C. 323,344 (1961). These safeguards, said the Commission, "...should amply protect the competing carriers, and prevent the using public from being misled". 30 F.C.C. at 968.

ITT Worldcom and RCA Globcom made similar objections when WUI entered into a joint venture in Puerto Rico called "Cable & Wireless/Western Union International, Inc." The Commission similarly rejected contention that there would be confusion with WUTelCo.* Just as the Commission found in 1961 and 1968, WUI believes that the concern of RCA Globcom and ITT

*Cable & Wireless/Western Union International, Inc., FCC 68M-646, released April 23, 1968 (File Nos. T-C-2109 et al).

Worldcom can be satisfied by the existing obligation of WUTelCo to notify its employees that there is no affiliation between the two companies and to require that no preference be extended to WUI.

RCA Globcom repeats the arguments previously made in this proceeding that a 1973 market survey supports its allegation of public confusion. The survey has not been made available to the Commission or other carriers, cannot be evaluated and is entitled to no weight. The survey is stale, and apparently was not designed to provide answers to the question of the general public's conception of the IRC's. Among other flaws in RCA Globcom's attempted use of the study in this proceeding, RCA Globcom has not complied with Section 1.363 of the Rules, which requires comprehensive information, inter alia, on

> "the assumptions made, the study plan utilized and the procedures undertaken. In the case of sample surveys, there shall be a clear description of the survey design, including the definition of the universe under study, the sampling frame and the sampling units; an explanation of the method of selecting the sample and the characteristics measured or counted."

Unless and until RCA Globcom complies with this section, arguments based upon its purported market survey are valueless.*

RCA Globcom attempts to prove the existence of confusion in the public's mind by the fact that WUI has managed to

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* In response to the arguments contained in RCA's Supplemental Comments dated August 1, 1975, incorporated by reference by RCA, WUI incorporates the relevant portion of its Reply Comments dated August 28, 1975.

gain a large share of the telex traffic originating on the WUTelCo system. This of course does not prove anything with regard to the public's knowledge of the carriers. WUI's large share is attributable to WUI's superior technology and innovations. For example, WUI was the first carrier to computerize telex, the first to offer abbreviated dialing, the first to offer departmentalized billing, the first to offer automatic billing information, the first and only to offer simplified format for cablegrams, the first and only to offer abbreviated dialing for cablegrams (Instacable-see Attachment B*), and so on. Furthermore, WUI's quality of service is superior and its marketing is superb.

Any advantage resulting from the Commission's proposal is far more likely to accrue to ITT Worldcom and RCA Globcom as a result of the wide public familiarity with their respective corporate families, and their continued use of such relationships for marketing purposes. See Attachment B to WUI's Reply Comments of August 28, 1975, relating to RCA Service Company. Their parents International Telephone and Telegraph Corp. and RCA Corporation are the 11th and 34th ranking companies, respectively, on the 1976 Fortune 500 list, with 1975 revenues of $13.9 billion and $4.8 billion, respectively. Their extensive advertising has resulted in wide public familiarity with their corporate name and logos. A person choosing a carrier from a list is

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* Instacable is a perfect example of competition by the IRC's.

more likely to pick ITT Worldcom or RCA Globcom, whose conglomerate name is familiar to him, than any other carrier. It is to alleviate this massive advantage enjoyed and used by ITT Worldcom and RCA Globcom that WUI has conditioned its support of the Commission's proposal on the adoption of a requirement that the full names of the carriers be shown on any list of carriers presented to the public.

WHEREFORE, WUI respectfully requests the Commission to issue an appropriate order implementing its required routing proposal, including the conditions specified in WUI's Comments of April 2, 1976, specifically that names of carriers on any list of carriers supplied to the public be written in full and not abbreviated, and that suitable provisions be included to ensure that order of names on any such list be rotated, and that the telex and TWX numbers permitting the filing of unrouted messages be ordered eliminated.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Roger P. Newell
Its Attorney

1 WUI Plaza
New York, New York 10004

Dated: May 10, 1976

Attachment A

P.
CONFIRES NYK

MI IN-CMASTER 1-0021[illegible]75.39 03/15/76
ICS [illegible] MLIN VA
20/0 35 WINMTN MLIN VA
TLX 199144 CONFIRES NYK
PI

IMPORTANT ANNOUNCEMENTS:

1. MAILGRAMS NOW CAN BE SENT TO AND FROM HAWAII. USE STANDARD TELETYPEWRITER MAILGRAM FORMAT. SAVE MORE THAN FIFTY PERCENT OVER DEFERRED CABLEGRAM SERVICE.

2. F.Y.I. NUMBER WAS CHANGED TO 3513 - PLEASE USE FOR ALL F.Y.I. CALLS.

3. LATEST STOCK NOTES AVAILABLE HOURLY - MAJOR INDICES AND N.Y.S.E. 12 MOST ACTIVE. DIAL 3513 AND KEY MARKET.

WESTERN UNION TELEGRAPH CO.

MNNN
1425 EST
.
CONFIRES NYK

Attachment B

Mailable one key cablegram addressing

WUI NY TELUS 145 10/25 03/01•

JONES CO. ATL

ATLANTA, GEORGIA
FR
MR. JOHN SMITH
123 ANY STREET
LONDON, (ENGLAND)

CABLEGRAM TEXT

ANNN•

WUI NY TELUS 145 10/25 03/01•

JONES CO. ATL

AA

CABLEGRAM TEXT

ANNN•

one extra gift item

Western Union International Inc.

CERTIFICATE OF SERVCE

I, Burnadine Diggs, do hereby certify that a copy of the foregoing pleading of Western Union International, Inc. has been sent by United States mail, postage prepaid, to the following:

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The French Telegraph Cable Company
25 Broad Street
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Director, Defense Communications Agency
Commercial Communications Policy Office - Code 108
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Washington, D.C. 20305

/s/ Burnadine Diggs

Dated: May 10, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act.	)	Docket No. 19660 RM-690

REPLY COMMENTS OF
TRT TELECOMMUNICATIONS CORPORATION

TRT Telecommunciations Corporation (TRT) hereby submits its reply comments relating to the legal, economic and operational implications of distributing outbound, unrouted international message telegraph traffic on the basis of required customer routings.

TRT in its initial comments has shown that it would not be possible in the foreseeable future to implement a fair and unbiased required customer routing system for the vast majority of unrouted international message traffic filed with The Western Union Telegraph Company (Western Union) and that any attempt to establish such a system would result in a completely arbitrary distribution of unrouted traffic which would not in any meaningful way reflect true customer choice or the competitive efforts of the carriers. Moreover, we have shown that the implementation of such a system under current circumstances would be extremely costly and would unnecessarily burden occasional users by requiring them to make an arbitrary choice of routing among carriers without the information needed to make this choice on a rational basis.

ITT World Communications Inc. (ITT), RCA Global Communications, Inc. (RCA) and Western Union in their comments also agree that required customer routing could not be implemented on a fair or cost effective basis. It is significant that Western Union, which was the initial advocate of the adoption of required customer routing in place of an allocation formula, upon further reflection and study, has now determined that this is not a feasible alternative. Thus, Western Union estimates that the cost of implementing required customer routing would be at least $2,000,000 annually, and probably much more. (Western Union Comments, p. 10). Moreover, Western Union, which would be responsible for advising customers of their routing alternatives under required customer routing, has expressed grave doubts that it would be able to do so in a fair and unbiased manner. (Western Union Comments, pp. 4-7).

Only one party, Western Union International, Inc. (WUI), submitted comments favoring the adoption of required customer routing. However, even WUI's support was conditional. Thus, WUI states that its first choice is the retention of the existing formula, which was designed to freeze the market shares of the carriers to that existing 34 years ago in 1942. Moreover, WUI would only accept required customer routing as an alternative to the existing formula provided that Western Union operators are required to use the full names of the IRC's when advising the public of the list of available routings in order that WUI would be assured that it would receive maximum benefit from the public association and confusion of the name of Western Union International with that of The Western Union Telegraph Company.

WUI does not indicate how the practical problems in implementing required customer routing, which have been enumerated in the pleadings of the other parties, could be solved. In this connection, WUI merely makes the unsupported and patently false statement that, "The vast majority of the public should quickly learn that routings are required, and that they must specify the carrier of their choice." (WUI Comments, p. 5). However, WUI does not attempt to explain how "the vast majority of the public", which send no more than a few international telegrams in their lifetimes, could quickly learn of the requirement for selecting a routing and their routing alternatives. We submit that such awareness on the part of the "vast majority of the public" cannot be reasonably anticipated as a result of any additional advertising and solicitation efforts by the IRC's. As WUI states, "The self interest of each (IRC) will ensure that the additional amounts spent on marketing will not exceed the marginal benefit to each carrier of the traffic resulting from these marketing efforts, and thus expense will be kept within reasonable bounds." As fully discussed in the Comments of TRT, ITT, RCA and Western Union, it is readily apparent that any such additional prudent and cost-effective marketing efforts on the part of the IRC's would not begin to reach and fully inform "the vast majority of the public" as to the available routing alternatives.

WUI's assertion that required customer routing would be less costly to implement than an allocation formula is, of course, clearly erroneous. (See Western Union Comments, pp 7-11). In view of WUI's primary advocacy of the retention of the patently anti-

competitive provisions of the existing formula, one must also question the genuineness of its assertion that required customer routing will result in added competition. As explained in TRT's initial comments, the distribution of unrouted traffic under required customer routing would primarily reflect the relative degree of corporate name-recognition of the IRC's rather than any meaningful competition benefiting the public.

Accordingly, we respectfully submit that WUI's position in support of the adoption of required customer routing is patently self-serving, without merit and should be summarily rejected by the Commission.

In addition to addressing the question of the desirability of required customer routing, Western Union's initial comments herein also set forth its plans for the mechanization of the interim formula. (Western Union Comments, pp. 15-21). Accordingly, although this subject may not be entirely within the scope of the issues, we believe that it is appropriate for TRT to express its views on Western Union's proposal in these Reply Comments.

In its Comments, Western Union announced that it intends to proceed with the mechanization of the interim formula at an estimated cost of $350,000 and requested the IRC's to immediately express any oppositions which they may have to this plan. TRT agrees with Western Union that administration of the interim formula should be expeditiously automated, and TRT agrees to reimburse Western Union for its proportionate share of any additional programming costs incurred by it for such automation as contemplated in the interim formula. TRT, of course, cannot agree at this point as to the accuracy of Western Union's estimate set

forth in its comments that such programming will cost $350,000. In this regard, we would expect that any bills submitted by Western Union to TRT for reimbursement of its programming costs would be detailed and would fully document all costs incurred by it.

Although we agree that the full automation of the interim formula is a desirable goal which should be expeditiously pursued, we would most strongly oppose any suggestion that the implementation of the interim formula should be further postponed until such automation can be achieved.

The Commission has found in its Decision in this docket released January 7, 1976, "that the present method of distribution embodied in the international formula is unjust, unreasonable, inequitable and not in the public interest." The Commission further held that:

> "... the record before us as well as elementary logic clearly warrants the conclusion that both the individual carriers and the public have been harmed by the formula's denying a carrier unrouted traffic. The carriers so affected have seen the marketing efforts essentially nullified by the balancing provisions -- ironically, the more successful those efforts have been, the more the carrier has been penalized. The formula's arbitrary disregard of the public's role has thwarted its expectations and may have resulted in an improper allocation of resources. Accordingly, we have concluded that those who have been injured are entitled to relief." (Emphasis added, Decision, para. 43.)

In light of these definitive and conclusive findings of the Commission, we submit that it would be unconscienable to postpone relief to the public, and to the carriers now being denied a just allocation of unrouted traffic, for an additional extended period pending the completion of Western Union's programming efforts.

In this regard, we think it should be recognized that there has been a need to fully automate the administration of the formula for a number of years and that Western Union's comments are somewhat misleading insofar as they tend to imply that automation is a new requirement resulting from the Commission's prescription of the interim formula. Thus, it is apparent that substantial savings in the cost of administering the existing formula could have been achieved if it had been fully automated years ago at the time that Western Union installed its computerized domestic switching system. Although Western Union now estimates in its instant Comments that the annual cost of the manual administration of the interim formula will be $474,000, it had previously estimated that the incremental cost of administering the interim formula (costs in addition to the costs presently incurred in administrating the existing formula) would be only $150,000 per year. It is thus apparent that substantial costs are already being incurred by Western Union in administering the existing unlawful and unjust formula, and that the additional $150,000 annually required to administer a lawful and just formula cannot be considered prohibitive, especially in comparison with Western Union's claimed landline haul revenue requirements of in excess of $30 million annually (Western Union Exhibit No. 5, Attachment 4 in the Landline Haul Proceeding, Docket 19660).

Moreover, we note that Western Union has already commenced hiring and training the additional employees and installing the additional equipment needed for the manual administration of the interim formula. Thus, any further delay in the implementation of the interim formula would in fact result in

"increased and, in a sense, unnecessary start-up costs for Western Union." (Western Union's Contingent Motion For Clarification, filed in this docket on March 5, 1976, p. 4.)

Accordingly, we submit that the question of whether Western Union should fully automate the administration of the formula and the question of whether the interim formula should be implemented without further delay are separate and independent from each other. In this regard, we believe that, regardless of what allocation formula is in effect (i.e., the interim formula or the existing formula), its administration should be fully automated as expeditiously as practical. We submit, however, that it is clear, in light of the Commission's findings in its Formula Decision, that the existing unlawful and inequitable formula should be immediately rescinded and replaced by the interim formula without regard to Western Union's schedule for its eventual automation.

WHEREFORE, TRT requests the Commission to dismiss this proceeding, insofar as it contemplates a possible prescription of required customer routing. TRT further requests the Commission to require the prompt implementation of the interim formula to be applicable until such time as it should be amended in a subsequent proceeding in accordance with the requirements of Section 222(e)(3) of the Communications Act.

Respectfully submitted,

TRT TELECOMMUNICATIONS CORPORATION

BY: J. Robert Moman

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May 10, 1976

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Cynthia A. Martell

May 10, 1976

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MAY 11 1976
LAW DEPARTMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
	)	
International Record Carriers' Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed under Section 222 of the Communications Act	)	Docket No. 19660 RM-690
	)	
	)	
	)	

To: The Commission

REPLY COMMENTS OF
THE WESTERN UNION TELEGRAPH COMPANY

The Western Union Telegraph Company (Western Union) hereby files the following Reply to the Comments submitted by the international carriers (IRCs) pursuant to the Report and Order and Notice of Proposed Rule-Making (FCC 75-1430) adopted by the Commission on December 22, 1975 and released on January 7, 1976.

In its initial Comments, Western Union requested a continuation of the present formula mode (either as embodied in the interim formula or in any other suitable formula) of distributing international cablegram traffic among the IRCs. Western Union explained that it has become convinced that the so-called all-routed solution suggested by the Commission's January 7 Order would not be in the public interest.

I.

Two of the IRCs -- RCA and TRT -- argued, as did Western Union, that the all-routed approach was impractical and that the Commission should retain the formula mode of distributing traffic to the IRCs.*/ Although ITT urged that ". . . the all-routed approach should be established as an ultimate objective toward which all parties would cooperatively strive," it, nevertheless, took the position that this objective could only be accomplished over the long term (ITT Comments, p. 2). Thus, ITT recognized ". . . that there are substantial problems associated with reaching that goal [i.e., an all-routed solution] which should be thoroughly explored by the Commission before ordering the implementation of an all-routed 'Formula'" (ITT Comments, p. 9). In ITT's "judgment",

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*/ TRT noted in its Comments that it would be "feasible" to implement required customer routing for cablegram traffic filed via Western Union telex and TWX terminals (TRT Comments, pp. 2, 8). While Western Union would agree that this is "feasible", it is obviously pointless. Only 4% of all unrouted traffic is filed by Western Union telex and TWX subscribers. The remaining 96% of the traffic would still have to be distributed by means of a formula. The slight decline in formula traffic would not result in any meaningful cost savings once distribution was computerized. All that would be accomplished would be that telex and TWX subscribers would be denied the right -- granted all other Western Union customers -- to file cablegram traffic without specifying a given routing. There is clearly no significant advantage to be gained by implementing an all-routed solution limited to the 4% of the traffic filed by Western Union telex and TWX subscribers.

TRT reached the identical conclusion. It stated that

> ". . . since only 4% of unrouted traffic would be affected, the implementation of these changes would have little effect on total distribution of traffic among the carriers. We therefore believe that there would be little purpose in modifying the interim formula to require Western Union to implement those operating changes" (TRT Comments, p. 8).

none of the "possible approaches" which it suggested in its Comments offered a "practical methodology for achieving an all-routed distribution in the near-term (i.e., the next one to three years)." (ITT Comments, p. 4).

ITT's Comments are largely devoted to an analysis of the problems inherent in implementing an all-routed solution. The difficulties mentioned in ITT's pleading are in many ways similar to those noted by Western Union. Our basic disagreement with ITT stems from its belief -- and ITT's Comments do not in any way explain the basis for its optimism in this regard -- that the difficulties in implementing an all-routed solution would somehow diminish or even disappear with the passage of time. Indeed, ITT's own pleading clearly reflects the permanent nature of the impediments to an all-routed solution. Thus, ITT points out:

- That "an effective advertising/marketing campaign to achieve a "carrier consciousness" for the IRCs among the approximately three million unrouted message originators would be prohibitively expensive . . ." (ITT Comments, p. 4);
- That "requiring Western Union personnel interfacing with the sender to provide routing information and identification of the routing options (IRCs) available to the sender is . . . plagued with administrative and economic problems" (ITT Comments, p. 6);
- That, in particular, "the expense of . . . training [Western Union] operators in addition to the decreased productivity due to the Western Union personnel making overseas

routing explanation to customers would likely increase Western Union's overall operating costs by a substantial amount. . ." (ITT Comments, p. 6); and

• That ". . . any mandatory routing requirement enforced by Western Union's agents virtually guarantees a substantial bias in those routings in favor of Western Union International, Inc. (WUI) because of the close similarity of names between those two carriers. . ." (ITT Comments, p. 7).

It would seem readily apparent that none of these problems will diminish to any significant extent in the future and that they will be just as severe three years from now (the end of the "near-term" according to ITT) as they are today.

II.

The only carrier which considered an all-routed solution to be possible or desirable in the near future was WUI. An all-routed solution, however, was not WUI's first choice. WUI explained that its Comments were submitted ". . . without prejudice to its preference for retention of the existing formula" (WUI Comments, p. 2). Thus, WUI does not object to the formula mode of distributing international cablegram traffic. It simply believes that the Commission has selected the wrong formula; that the new interim formula does not give it what it deems to be a fair share of unrouted traffic; and, that, under the circumstances, it would rather take its chances with an all-routed solution. The fact that WUI's first choice is a continuation of the formula mode of

distributing traffic, however, illustrates that it has no difficulty with the formula concept per se and that it does not -- apparently -- share the Commission's tentative conclusion that a requirement for customer routings possesses inherent advantages over the formula approach.*/

In any case, we find nothing in WUI's Comments which would demonstrate the superiority of an all-routed approach.

A. WUI argues that

> "[O]ne result of requiring the public to route messages would be to force all of the IRCs to increase their marketing efforts so as to acquaint the public with the existence and quality of their services. . ." (WUI Comments, p. 3).

As Western Union pointed out in its initial Comments (pp. 12-14), there is no merit to the assertion that an all-routed solution would lead to a substantial increase in the IRCs' "marketing efforts." Approximately 65% of all international cablegram traffic is already routed. The remaining market for unrouted traffic is limited (only 3 million unrouted cablegrams amounting to $7.5 million in revenues were sent in 1974), declining and very likely unprofitable. It is generally recognized that senders of unrouted cablegrams are, for the most part, infrequent users, widely dispersed throughout the country (ITT Comments, p. 4; RCA Comments,

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*/ In earlier pleadings filed with the Commission, WUI was lavish in its praise of the current formula. See, e.g., Comments of Western Union International, Inc., filed July 8, 1974, p. 2; Reply of Western Union International, Inc., filed August 16, 1974, pp. 1, 3-5, 8; Responsive Comments of Western Union International, Inc., filed August 1, 1975, p. 2.

p. 10; TRT Comments, pp. 4-5). WUI itself concedes that routed traffic is "mostly business" while unrouted traffic is "mostly social (WUI Reply Comments, filed August 28, 1975, p. 4).

Obviously, any attempt to reach these "social", and presumably occasional, users will require an extensive and costly nationwide advertising campaign. The IRCs themselves have indicated that such an effort would not be worthwhile economically and that they have no intention of spending substantial sums in an attempt to induce customers to specify particular routings (see, TRT Comments, p. 12; ITT Comments, p. 4; RCA Comments, pp. 5-6). For its part, WUI had earlier explained to the Commission that the existing formula has been responsible for preventing the "waste of resources" that would be involved "in fruitless solicitation efforts . . ." (Reply of Western Union International, Inc., filed August 16, 1974, p. 5).

We would agree with TRT (see TRT Comments, p. 11) that if there is any incentive for the IRCs to solicit customer routings, it is maximized by the interim formula. Since under the interim formula unrouted traffic is distributed in accordance with the IRCs' share of routed traffic, the successful solicitation of a routed message carries with it a "bonus" in the form of a share of unrouted traffic. Consequently, the interim formula provides a certain "leverage effect" which is entirely absent from the all-routed solution.

B. In a related argument WUI suggests that increased marketing efforts would

> "in turn . . . lead to a situation where all carriers would compete fully for all outbound message traffic. . ."

and that

> "to the extent that quality of service might be dependent upon the effectiveness of competition, the result of the proposed required routing may very well be increased efforts by all carriers to improve existing services and to innovate new services."

Here again, WUI's contention is based on a faulty premise. For the reasons explained above, and in Western Union's initial Comments (see, pp. 12, 14), the all-routed solution would not provide an incentive for the IRCs to increase their "marketing efforts" or to "compete fully for all outbound message traffic."

Moreover, the idea that an all-routed solution would somehow stimulate competition among the IRCs and thereby improve service is totally at odds with WUI's earlier assurances to the Commission that the existing formula had already accomplished this desirable result. Thus, in its Reply of August 16, 1974 (pp. 5, 8), WUI informed the Commission that the existing

> ". . . formula has fostered keen competition between the international record carriers in quality of service, as evidenced by the fact that all carriers have conducted extensive modernization and computerization of their facilities.

* * *

> ". . . Indeed the entire history of the international record carrier industry reveals continuing efforts by all carriers to improve their service, and the present highly developed, computerized operation is evidence that the formula has not in any way limited the inducement to provide the best possible service to the public."

WUI cannot have its cake and eat it too. Surely, if the ideals of keen competition and excellent service have already been optimized by the existing formula, the all-routed solution would not appear necessary to reach these same goals.

C. WUI claims that

> "The required routing proposal would at one stroke eliminate all of the complexities involved in the administration of a formula designed to govern distribution of the traffic to almost two hundred separate points, and would eliminate all claims of unfair administration of the formula . . . ." (WUI Comments, p. 4).

We believe that WUI is wrong on both counts. First, as Western Union noted in its Comments, the "complexities" of the new formula will present no special problems once distribution is automated.*/ The interim formula will be no more difficult for Western Union's computer to handle than the existing formula which is so highly regarded by WUI.

Second, it is readily apparent that the all-routed solution would give rise to all kinds of complaints of "unfair administration." (See Western Union's Comments, pp. 4-7.) In fact, the squabbling has already begun. ITT (Comments, p. 11), RCA (Comments, pp. 8-9), and TRT (Comments, p. 11),

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*/ Such automation is scheduled to be substantially completed by November 27, 1976 (Western Union Comments, p. 17).

take the position that an all-routed solution would result in a substantial bias in favor of WUI because of the similarity of its corporate name to that of Western Union. This problem would obviously be aggravated if the Commission accedes to WUI's request that the Western Union operator recite WUI's full corporate name -- Western Union International -- to each customer being assisted in specifying a particular routing. (See RCA Reply Comments, p. 7.)

D. In our view, WUI's Comments are seriously deficient in that they make no serious attempt to analyze the real problems that must be faced in implementing an all-routed solution. According to WUI, all that is necessary for the effective operation of a system of required customer routings is that the names of the various IRCs be recited in full and that the order of recitation be rotated periodically (WUI Comments, p. 7). Thus, WUI states -- without any attempt at verification -- that

> "The vast majority of the public should quickly learn that routings are required, and that they must specify the carrier of their choice. Most persons who file cablegrams with Western Union will soon realize that they should be prepared to specify the carrier of their choice before contacting Western Union." (WUI Comments, p. 5).

For reasons already recited, this picture of what would occur must be regarded as something of a pipedream.

CONCLUSION

For the reasons stated herein and in its initial Comments, Western Union respectfully requests that the Commission continue to require that international cablegram traffic be distributed to the IRCs through a formula.

Respectfully submitted,

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